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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 1041.

THOMAS H. MASON, WILLIAM HART SMITH, SULLIVAN BALLOU, DON M. DICKINSON, AND ALFRED RUSSELL, APPELLANTS,

vs.

THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, THOMAS H. PERKINS, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED OCTOBER 14, 1893.

(15,425.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 24, 1894.

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1 In the Circuit Court of the United States for the Western District of Michigan, Northern Divison. In Equity.

To the judges of the circuit court of the United States for the western district of Michigan, northern division:

Thomas Henry Mason and William Hart Smith, who are partners in trade doing business under the name and style of Mason & Smith, and Sullivan Ballou, all of the city, county, and State of New York and who are citizens of the State of New York, bring this their bill against the Pewabic Mining Company, which is a body corporate created and existing (as more fully hereinafter set forth) under the laws of the State of Michigan, having its principal office for the transaction of business and carrying on its business operations at Hancock, in the county of Houghton, in the State of Michigan and in the western district of Michigan and in the northern division of said western district, and which is a citizen of the State of Michigan, and against Johnson Vivian, who resides at Hancock, in the northern division of the western district of Michigan, and who is a citizen of the State of Michigan, and Henry Billings, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, who reside at Boston, in the State of Massachusetts, and who are citizens of the State of Massachusetts, but who, with said Johnson Vivian, maintain and have an office and carry on business at Hancock, in said northern division of the western district of Michigan, and the Pewabic Copper Company, a corporation created and existing under the laws of the State of Michigan and which exercises its franchises and carries on its business and has its principal office at Hancock, in the county aforesaid, in the State and in the
northern division of the western district of Michigan, and is
2 a citizen of the State of Michigan, and your orators file
this bill in their own behalf and in behalf of all stockholders who may desire to come in and join herein or take benefits under the decree or proceedings of the court.

And thereupon your orators complain and say—

That on the fourth day of April, in the year one thousand eight hundred and fifty-three, the Pewabic Mining Company was created a body corporate in fact and name, under the name by which it is herein designated, under and by virtue of the laws of the State of Michigan providing for the creation and organization of corporations for the carrying on of mining or manufacturing business by not less than three persons entering into articles of agreement in writing, according to the provisions of said laws, and by causing such articles of agreement to be filed with the secretary of state of the State of Michigan and with the county clerk of the county of Houghton, in which county it was proposed to carry on its mining business, and in all other things and matters duly complying with the provisions of said laws for the creation and operation of the corporation and for the carrying on of the business of mining in the county of Houghton aforesaid, and that in and by the terms of said articles of association the period of existence of said corporation was fixed at thirty years, all as in and by the said articles of association when produced and proved as this court may direct will more fully and at large appear, and a copy of which articles of association are hereto annexed, marked "A," and are here referred to and made a part of this paragraph of this bill.

2.

Your orators further show to the court that after its organ-
3 ization the said corporation entered upon the enjoyment of its franchises and commenced business in accordance with the objects of its organization.

That it purchased and acquired a large amount of real estate in the said county of Houghton, upon which it carried on the business of mining copper and silver, and for that purpose acquired from its stockholders and expended therefor a greater portion of its capital, and upon buildings, machinery, and other equipments thereon, and in the purchase of personal property incident to the carrying on its said operations, and that it continued to own and possess the said land and to carry on active operations during the whole period of thirty years next succeeding the time of its organization, and that your orators are unable to give specifically and in detail the expenditures of said company or the transactions of the said company for the reasons hereinafter stated.

Your orators further show that for the year ending December 31st, 1883, after active operations for nearly a period of thirty years, the board of directors of said company reported to the stockholders its business for the year 1882 as follows, viz:

"*Statement of Production and Cost of the Same at Mine.*"

"Number of tons of rock hoisted in 1882, 74,042.
"Number of tons of rock stamped, 63,592.
"Cost per ton, entire treatment, $3.03.
"Pounds of mineral per ton hoisted, 24.02.
"Pounds of ingot per ton hoisted, 20.02.
"Percentage of ingot in mineral, 82.88.
"Total amount of ingot produced, 1,482,664 lbs.
"Tons of rock stamped per cord of wood, 10.84.
"Cost of stamping per ton of rock, $0.64\frac{97}{100}$.
"In 1881 60,427 tons were stamped, giving a yield of 1,872,878 lbs., or 1.92 per cent.
4 "In 1882 63,592 tons were stamped, giving a yield of 1,482,664 lbs., or 1.51 yield, showing a decrease of $\frac{41}{100}$ per cent. in yield and an increase in amount stamped of 3,165 tons.
"It is estimated that there is about 5,000 tons of rock in the mine broken and ready for hoisting against 6,194 tons December 31st, 1881."

And your orators further show that on the 1st day of January, 1883, the said board of directors reported to the stockholders that there had passed through their hands in cash receipts from the company's property $678,928.14 during the preceding year, and that of that amount they had on hand on January 1st, 1883, the sum of only $16,246.96, and that they had expended as "extraordinary" expenses during the then preceding year, for buildings, $18,193.77; for tools and machinery, $45,920.81; stamp-mill, $12,206.30; for mine work, $47,950.94, and for surface work, $6,353.40, and that before such expenditure the mining property included real and personal estate, was of great value, and had cost more than —— dollars.

Your orators further show that the business of the company, according to the report of its agent and board of directors, had been carried on at a loss during the said year 1882 and for several years previously, and that, while no dividends whatever had been paid for the period of five years last past, assessments had been ordered by the board of directors of said company and had been paid by stockholders on such assessments to prevent the forfeiture of their stock.

Your orators further show that the defendant The Pe-
5 wabic Mining Company, at an annual meeting duly held
early in the year 1883, elected as its board of directors for the year 1883 the defendants Perkins, Billings, Butterick, Demmon, and Vivian, of whom a majority of the board, to wit, Demmon, Vivian, and Billings, had been upon the board the preceding year, and of whom Vivian for both years had been agent of the mine at Hancock, Michigan.

III.

Your orators further show that after the annual meeting held in the month of March, 1883, the said Pewabic Mining Company and the said defendants, Perkins, Butterick, Billings, Demmon, and Vivian, assuming to act as a board of directors, and the said Vivian, assuming to act as its agent at the mine at Hancock, in the said State of Michigan, without the consent or knowledge of your orators or of the other stockholders not interested in their fraudulent schemes and objects hereinafter more fully set forth up to and after the — day of April, A. D. 1883, did not proceed to settle and close the concerns of said corporation and to dispose and convey its property and to divide its capital stock, but did proceed to continue the business as it had theretofore been conducted, in this, that it carried on its mining business as before, during the thirty years of its existence, by making new openings in said mines, by sinking and drifting and stoping therein and by borrowing money to carry on said operation, by erecting new boiler-houses, by extending their engines and capacity, by erecting steam pumps, by operating their stamp-mills, and expending $100,000.00 in new openings and cross-cuts in the mine and over $50,000.00 in treating rock taken from the mine and in preparing the mine for future mining and in making assessments on the stockholders to carry on their operations, which stockholders have paid to avoid forfeiture of their stock, and incurred liabilities for labor and otherwise of over

$104,000.00; and your orators herewith submit the state- 6 ment of the directors themselves issued to stockholders of their doings in behalf of said company for the year 1883, which is here made a part of this paragraph, referred to as such, and marked "B."

IV.

Your orators further show to the court and aver that the said defendant, The Pewabic Mining Company, on the twenty-sixth day of March, A. D. 1880, and in accordance with the statutes of the State of Michigan in such case made and provided, did increase its capital stock from 20,000 shares of twenty-five dollars each to 40,000 shares of twenty-five dollars each, and that all of said capital stock, including the original and the increase, has been issued and is held by *bona fide* stockholders in said Pewabic Mining Company.

V.

Your orators further show and aver that they are and have been for a long time prior to the 1st day of March last past the legal owners of the following capital stock in the said Pewabic Mining Company in the proportions to each as follows:

Mason & Smith	2,550 shares.
Sullivan Ballou	100 "

and upon which have been paid all dues and assessments of every name and nature, as in and by the certificates of stock therefor held by your orators and in and by the books of said last-named company when produced and proved will more fully and at large appear.

That Edward W. Mussy, of Boston, in the State of Massachusetts, during the same period was the owner of 2,100 shares of said stock in like situation in all respects as first stated of your orators' 7 said stock; that said Mussy desires to join as complainant in this bill and has authorized and directed your orators to join him in this bill as complainant in behalf of all his said stock, and your orators have omitted him solely on the ground that touching him may raise a question of limitation in this court to decree an accounting against said defendants other than said copartners.

That no change has been had in the organization of said Pewabic Mining Company or made other than is in this bill set forth.

VI.

That early in March, 1884, your orators received and they are informed and believe that other stockholders in said Pewabic Mining Company received the notice which was issued by the said defendants as aforesaid constituting the board of directors of said last-named company for the year 1883, a true copy of which is hereto annexed, marked "C."

VII.

Your orators further show to the court that they have, at reasonable times, at the office of said company, in Boston, frequently applied to the officers of said defendant, The Pewabic Mining Company, in charge of said books to be permitted to see the stock and other books of the company and have applied to them for lists of its stockholders and have been refused by them access to them and such lists, and your orators have applied to such officers at such times and places for information as to the total amount expended for real estate and otherwise and for a full and complete statement of the affairs of said corporation, but have been refused any and all information save such as is embodied in the said report "C."

8 They further show that they have applied to the auditor general of the State of Michigan to ascertain whether there was a report on file which would give any information, and have been informed by that official that no report had been filed by said defendant corporation since December 31st, 1879, and hereto annexed, marked "D," is the official reply of said auditor general to your orators' said application; and your orators, for reasons in this paragraph set forth, are unable to state who are stockholders in said Pewabic Mining Company save the defendants and complainants other than said defendant corporation and said Mussy.

VIII.

Your orators further show unto the court that they personally attended the meeting assumed to be called, in and by the notice aforesaid, at the office of the company, in Boston, Massachusetts, on the 26th day of March, 1884, and that the stock there represented was all largely represented by proxies held by the defendants (other than said corporation) and in their interest by their agents.

That your orators had employed a stenographer to attend said meeting in their behalf, and that the following is in all material respects a correct statement of all the proceedings from the calling to order until adjournment:

Minutes of proceedings at annual meeting of the stockholders of the Pewabic Mining Company held at the company's office, 19 Congress —, Boston, Mass., on March 26th, 1884

The meeting was called to order by the president, Mr. Thomas H. Perkins, at 12 o'clock noon.

The secretary read the notice of the meeting. The reading of the minutes of the previous meeting was, on motion, waived.

Motion made and seconded that the report of directors as printed b*y* accepted and placed on file.

Mr. W. Hart Smith moved, as an amendment, and read

9 the following:

Whereas the charter of the Pewabic Mining Company expired by limitation in April, 1883, and the statutes of Michigan provide that corporations whose charter expire by limitation shall nevertheless continue to be bodies corporate for the term of three years after the time when they would have been so dissolved for the purpose of prosecuting and defending suits by or against them and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which such corporations have been or may be established;

And whereas, by the report of the directors of said company of date January 1st, 1884, it appears that the foregoing provisions of said statutes had not been followed, that assessments have been called and the money thereby obtained expended in active mining operations, to the loss and detriment of the stockholders of said company;

Therefore, resolved that the said report be, and is hereby, rejected, and that the acts of said directors as set forth in said report be, and hereby are, wholly disallowed by the stockholders of said Pewabic Mining Company.

Amendment seconded by E. W. Mussey. Stock vote called for by Mr. Smith. Proxies were here called for by the secretary and handed in to him. The secretary then stated that thirty thousand shares or over were represented.

The president, on motion that he appoint three tellers, appointed S. L. Smith, James P. Brewer, and G. H. Remick.

Vote on amendment taken by tellers and announced by them as follows:

Total votes cast, 32,383.
Voting yes, 5,669.
Voting no, 26,714.

The original motion was then put and carried by a *viva voce* vote.

10 Mr. J. H. Chandler here read the following resolution:

Resolved, That the board of directors be authorized to sell and dispose of the property of the company for a sum not less than $50,000.00; that the president and secretary be authorized to execute all conveyances necessary to carry out the contract for the sale of the property of this company made by the board of directors, and that the board of directors be, and hereby are, authorized to close up the business of the company.

Mr. Chandler here read the following resolution, stating that it was a supplemental resolution:

Resolved, That it is the sense of this meeting of stockholders that the property of this company shall be sold to a new corporation, organized under the laws of Michigan, on the basis of 40,000 shares, and that the stock of such new corporation shall be issued to and received by the stockholders of this company in payment for the same; stockholders to have the right to receive equal number of shares in new company, if they so elect, on surrendering certificates of this company within thirty days after April 12, 1884, and in case stockholder does not take stock of the new corporation he is to receive his *pro rata* share in money.

The tellers here announced that there was an error in the votes as given on Mr. W. Hart Smith's amendment and stated the correct vote would be as follows:

Total votes cast, 33,393.

Voting yes, 6,679.

Voting no, 26,714.

Mr. Chandler moved the adoption of the resolutions read by him. Motion seconded.

Mr. W. Hart Smith states that he is here to protest against any sale of the property except for cash, and moved as an amendment the first resolution, and read the following:

Resolved, That the board of directors of the Pewabic Mining
Company be, and hereby are, authorized to sell and dispose
11 of, for cash only, at public or private sale, all the real and
personal property of said company for the best prices that can be obtained therefor: Provided, however, that before any sale of said real and personal property is made by the said board of directors notice that said real and personal property will be sold for cash and for the highest price offered therefor shall be given to each stockholder of said company in the same manner as the statutes of Michigan provides; that notice of a special meeting of stockholders in mining corporations shall be given, and provided also that in case said board of directors shall determine to sell said real and personal property at public auction notice of the time and place of such sale shall be given to each stockholder of said company in the same manner as the notice above mentioned is required to be given.

Resolved, That the said board of directors be, and hereby are, directed, out of the proceeds of the sale of said real and personal property (the expenses incidental thereto being first deducted), to first pay the indebtedness of said company and then to distribute the remainder of such proceeds among the stockholders of said company *pro rata.*

Amendment seconded by Mr. Mussey.

Stock vote on the amendment called for by Mr. Smith.

Vote taken by the tellers and announced as follows:

Votes cast, 31,177.

Voting yes, 6,774.

Voting no, 24,403.

The first resolution was then adopted by *viva voce* vote (Smith, Mussey, and Pope not voting).

Mr. Chandler moved the adoption of the second resolution; seconded.

Mr. W. Hart Smith moved as an amendment the amendment
offered by him to the first resolution; seconded by Mr. Pope.
12 Mr. Smith called for a stock vote on the amendment.

Vote taken by tellers and announced as follows:

Votes cast, 35,168.

Voting yes, 6,754.

Voting no, 28,414.

The original motion to adopt the second resolution was then brought up. Resolution read upon request of a stockholder.

Mr. W. Hart Smith here read the following protest:

To the officers, directors, and stockholders of the Pewabic Mining Company:

We, the undersigned stockholders of the Pewabic Mining Company, do earnestly protest against any sale, transfer, and conveyance, or either, of the real and personal property of said company to a new corporation to be organized under the mining laws of Michigan, and the receiving in payment therefor of the capital stock of said new corporation, on the following grounds:

1. That the Pewabic Mining Company has no legal right, authority, or power without the consent of each and every stockholder thereof to sell, transfer, or convey said property to said new corporation and receive in payment therefor the capital stock of said new corporation.

2. That the Pewabic Mining Company has no legal right, authority, or power without the consent of each and every stockholder thereof to sell, transfer, or convey its real and personal property to any person or persons, corporation or corporations, and receive anything except cash in payment therefor.

And we, the said stockholders, do further earnestly protest against any sale, transfer, or conveyance of the real and personal property of the said Pewabic Mining Company otherwise than for cash.

And we, the said stockholders, insist and demand that the real and personal property of said Pewabic Mining Company be sold for cash; that out of the proceeds of the sale of said property the debts of said company b*y* first paid, and the remainder of
13 such proceeds then distributed among the stockholders of said company *pro rata*, and that the affairs, business, and concerns of said company be finally settled and closed.

Dated March 26th, 1884.

(Signed)	MASON & SMITH,	owning	2,550	shares.
	EDWARD W. MUSSEY,	"	2,100	"
	SULLIVAN BALLOU,	"	100	"
By	P. P. POPE, *Proxy.*			
	PEARMAN & BROOKS,	"	250	"
			5,000	"

Protest filed with president by Mr. Smith. Mr. Smith states: We "make that as a protest against both of those resolutions."

Stock vote on the motion called for by Mr. S. L. Smith. Vote taken by the tellers and announced as follows:

Votes cast, 34,673.

Voting yes, 27,919.

Voting no, 6,754.

Motion made to proceed to election of directors. Directors balloted for. Tellers announced that 26,464 votes had been cast, of which Henry Billings, Thomas H. Perkins, Alden B. Butterick, Daniel D. Demmon, and Johnson Vivian had each received 26,464, Smith, Mussey, and Pope not voting.

On motion seconded, the meeting was dissolved.

14

IX.

Your orators further show and aver on information and belief that for the period of at least two years last past the said defendants, Perkins, Billings, Butterick, Demmon, and Vivian, with others to your orators unknown, have been managing the affairs of said company, not in the interest of the general body of stockholders, whose trustees they were, but in the interest of a syndicate of stockholders, in such manner as to gain for them the entire property and company assets (or its control in their interest) of the Pewabic Mining Company by depressing stock through a system of discouraging reports and more discouraging assessments by a concealment of the true value of the assets and condition of the company and procuring a sale of the property at private sale for less than its value.

X.

Your orator further shows that in pursuance of said scheme, since the said meeting of March 26th, 1884, they have hastily organized a new corporation under the laws of Michigan, which they call The Pewabic Copper Company, defendant herein, the articles of association of which company were filed in the office of the secretary of state of the State of Michigan, at Lansing, Michigan, on the 29th day of March, 1884, a copy of which articles are hereto annexed, marked "E," referred to, and made a part of this paragraph.

And that the defendants threatened to convey all the real and personal property of said Pewabic Mining Company to said newly organized company or some other person for the sum of $50,000.00 in accordance with said resolution introduced by said Chandler at said meeting as aforesaid; that the organizers and stockholders in said Pewabic Copper Company are all persons who were stockholders and directors of said Pewabic Mining Company on and before said March 26, and were fully cognizant of all the proceedings of said meeting and of the rights of your orators.

15

XI.

Your orators further show that while they have been unable to obtain any detailed description of the realty of said company and its other property, yet they charge and aver that the same is of very great value and would at public sale bring at the very lowest over $100,000, and they aver on information and belief that the same is worth in excess of that amount, and that without and in the absence of such accurate information your orators hereby offer for the said property $75,000 in cash for the assets of said company which are proposed to be sold for the sum of $50,000, as provided in said resolution of the meeting of March 26th, 1884, and they agree and promise to hold themselves ready to bid that amount at any sale ordered by the court and tender herewith security that they will do so.

XII.

Your orators further show that no other meeting of stockholders than that of March 26th, 1884, called by the notice aforesaid, has been had or called of the stockholders of said Pewabic Mining Company since January 1st, 1883, except an annual meeting early in the year 1883, and that no meeting authorizing the purposes and objects of the majority of the stockholders appearing by said proceedings of March 26th has been called or had at any time or place.

XIII.

Your orators charge that the Pewabic Mining Company and its said board of directors elected in 1883 after the expiration of the charters of said Pewabic Mining Company existed and controlled the assets of said company only as trustees for the use and benefit of its creditors and stockholders, and that their only powers
16 were to realize on and dispose of the property of said company for cash for the best interests of all concerned and to apply the proceeds to the payments of the debts of the said company and the surplus after such payment of debts to divide among your orators and other stockholders *pro rata*.

XIV.

Your orators further show and aver that said defendants either have or are about to convey all of said property and assets of said Pewabic Mining Company to said Pewabic Copper Company or some other person or persons in pursuance of the scheme aforesaid and in fraud of the rights of your orators and other stockholders.

XV.

And your orators fear that the said property and assets will be immediately disposed of, so that your orators and other stockholders cannot reach the same, so as to have the same applied to the payments of the labor debts and other obligations of the company and so as to defeat them from any participation in the surplus after the payment of such obligations.

Your orators pray:

1. That the said Pewabic Mining Company and said F. H. Perkins, A. B. Butterick, Henry Billings, D. L. Demmon, and Johnson Vivian may be decreed to account to and pay to your orators and other stockholders of the Pewabic Mining Company or to a receiver to be appointed by the court all the monies received by them from the assets, property, and business of said company from the expiration of its charter in April, 1883, unto the present time, including all monies so received and expended in carrying on the operations of said company or otherwise not properly and legally incident to the carrying out of their trust for the winding up of the concern.

17 2nd. That all the assets and property of said Pewabic Mining Company be sold at public vendue by a receiver of the court or as this court shall direct for cash to the highest bidder or for the best price that can be obtained therefor or in such manner as the court shall direct, and that the proceeds be devoted, first, to the payment of the legal obligations of the said company, and, second, to the stockholders *pro rata* according to the amount of their respective holdings.

3rd. That the affairs of said company be decreed to be wound up.

4th. That a preliminary injunction be granted, commanding the defendants to desist and refrain from disposing of said property or any part thereof or in any manner interfering therewith except for the purpose of preserving and protecting the same till the further orders of the court, and the said Pewabic Copper Company from receiving any conveyance thereof.

5th. That a perpetual injunction be granted to restrain the defendants from transferring or interfering with said property or any part thereof.

6th. That any transfer or conveyance of said property which may have been made by the said Pewabic Mining Company to the Pewabic Copper Company be decreed to be void and of no effect.

7th. That pending a hearing and decision of a motion for preliminary injunction an order may be made restraining the defendants from doing those things from the doing of which they are sought to be restrained by the prayer of this bill.

18 8th. That a receiver be appointed to take possession of all and singular the property and effects of the Pewabic Mining Company or which it may have pretended to transfer to said Pewabic Copper Company, with all the power of receiver in such cases, to wind up the affairs of said Pewabic Mining Company and distribute its assets under the direction of the court.

9th. And for such further and other relief, or both, as to the court shall seem meet and proper in the premises.

10th. That the said Pewabic Mining Company, the Pewabic Copper Company, Thomas H. Perkins, A. H. Butterick, Henry Billings, D. L. Demmon, and Johnson Vivian may full, true, and perfect answer make to all and singular the premises hereinbefore stated, averred, or charged, but without oath, their answer under oath being hereby expressly waived, and that as fully and particularly as if they were hereunto specifically interrogated.

May it please your honors to grant unto your orators writ of subpœna issuing out of and under the seal of this honorable court, directed to the Pewabic Mining Company, The Pewabic Copper Company, Thomas H. Perkins, A. H. Butterick, Henry Billings, D. L. Demmon, and Johnson Vivian, defendants, commanding them, on a certain day therein to be named and under a certain penalty to be therein inserted, to be and appear before this honorable court, then and there to answer all and singular the premises and to stand to and perform and abide by such order, direction, and decree as may be made against them.

THOMAS HENRY MASON,
By W. HART SMITH, *Att'y-in-Fact.*
SULLIVAN BALLOU,
By W. HART SMITH, *Att'y-in-Fact.*
WILLIAM HART SMITH.

DICKINSON, THURBER & HOSMER,
Sol'rs for Complainants.
CHAS. T. CONLEY,
DON M. DICKINSON,
Of Counsel.
F. B. DUNSTON,
Of Counsel.

19 UNITED STATES OF AMERICA, } *ss:*
District of Michigan, }

William Hart Smith, of the city, county, and State of New York, being duly sworn, deposes and says that he is one of the four complainants in the foregoing bill of complaint by him subscribed and that he is expressly authorized by the other complainants named in said bill of complaint to affix their signatures to said bill in their behalf; that he has heard read the foregoing bill and knows the contents thereof, and that the statements contained in said bill are true of his own knowledge except as to those matters therein stated to be on the information and belief of the complainant-, and that as to those matters he believes it to be true.

W. HART SMITH.

Subscribed and sworn to before me this 31 day of March, A. D. 1884.

CHESTER B. HINSDILL,
United States Commissioner in and for the
Western District of Michigan.

20 EXHIBIT "A."

Articles of Association for the Incorporation of the Pewabic Mining Company.

We, the undersigned, do associate ourselves together under the provisions of an act of the legislature of the State of Michigan entitled An act to authorize the formation of corporations for mining, smelting, or manufacturing iron, copper, mineral, coal, silver, or other ores or minerals, and for other manufacturing purposes, approved February 5, 1853, as an incorporation under the name of the "Pewabic Mining Company."

First. The said company is formed for the object and purpose of engaging in the mining, smelting, and manufacturing of copper, iron, and silver minerals and ores and for acquiring, holding, selling, and conveying all property, real and personal, necessary or convenient for carrying on the same and for the doing of all acts and the exercise of all the powers necessary, usual, or incident to the carrying on of the said business or any part thereof not contrary to the laws of the State of Michigan.

Second. The amount of the capital stock of said company is five hundred thousand dollars and the number of shares twenty thousand.

Third. The amount of capital stock now actually paid in is the sum of one dollar.

Fourth. The names of the stockholders of said corporation are as follows:

21 Fulton Cutting....	New York................	2,500 shares.
James M. Mills....	New York...........	2,500 shares.
H. S. Cothael............	New York................	2,500 shares.
D. A. Galloway..........	Bedford, N. Y.............	2,500 shares.
H. M. Hickok...........	Brooklyn, N. Y...........	2,500 shares.
L. A. Cook..............	Woonsocket, R. I..........	2,500 shares.
J. H. Mason.............	Woonsocket, R. I..........	2,000 shares.
Thos. F. Mason	Woonsocket, R. I..........	500 shares.
C. C. Douglass...........	Houghton Co., Mich.......	2,500 shares.

Fifth. The office for the transaction of business in the State of Michigan is located at the mine, in the county of Houghton, and the mining operations of said company are to be carried on in said Houghton county.

Sixth. The term of existence of said corporation shall be thirty years from the date hereof.

The stock, property, and affairs of said corporation shall be managed by a board of five directors.

In testimony whereof we have hereunto set our hands this fourth day of April, eighteen hundred and fifty-three.

THOMAS F. MASON.
COLUMBUS C. DOUGLASS.
DAN'L A. GALLOWAY.

STATE, CITY, & COUNTY OF NEW YORK, *ss:*

On this 4th day of April, 1853, before me, a commissioner appointed by the governor of Michigan to take testimony, acknowledgments, &c., to be used or recorded in Michigan, personally appeared Thomas F. Mason, Columbus C. Douglass, and Daniel A. Galloway, known to me to be the same persons described in and who executed the foregoing instrument, and acknowledged that
they had executed the same for the uses and purposes
22 therein mentioned.

Witness my hand and official seal.

JOHN BISSELL,
Commissioner for Michigan.

[L. S.]

STATE OF MICHIGAN, }
Office of the Secretary of State, } *ss:*

I, Harry A. Conant, secretary of state of the State of Michigan, do hereby certify that I have compared the annexed copy of articles of association of the "Pewabic Mining Company" with the original filed in this office April 11th, 1853, and that it is a true and correct transcript therefrom and of the whole of such original.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the great seal of the State of Michigan, at Lansing, this 29th day of March, in the year of our Lord one thousand eight hundred and eighty-four.

HARRY A. CONANT,
Secretary of State.

Ex. "B."

(Cover.)

Report of the Pewabic Mining Company, January 1, 1884.

Directors: Thomas H. Perkins, Henry Billings, A. B. Butterick, D. L. Demmon, and Johnson Vivian, of Michigan.

Boston office, No. 19 Congress street, room 11. Thomas H. Perkins, president; D. L. Demmon, treasurer.

Mine located at Hancock, Lake Superior, Michigan.

Boston: Nathan Sawyer & Son, printers, No. 70 State street. 1884.

(Fly.)

Report of the Pewabic Mining Company, January 1, 1884.

Directors: Thomas H. Perkins, A. B. Butterick, Henry Billings, D. L. Demmon. Johnson Vivian, of Michigan, Hancock, resident director.

23 Boston office, No. 19 Congress street, room 11. Thos. H. Perkins, president; D. L. Demmon, treasurer.

Mine located at Hancock, Lake Superior, Michigan.

Boston: Nathan Sawyer & Son, printers, No. 70 State street. 1884.

Report.

Office of the Pewabic Mining Company (Howard Bank building), No. 19 Congress street.

BOSTON, MASS., *February* 28, 1884.

To the stockholders of the Pewabic Mining Company:

Herewith we hand you a full report from our agent of the workings and expenditures at the mine for the year 1883, and also of the condition of the property at the close of that year. The openings are given in detail, as well as the cost of the same, in order that any one can readily see where the money of the company has been expended and what for, and the cost per foot of sinking and drifting as well as stoping will compare favorably with those of any other mine of same nature of rock.

Work has been pushed as fast as possible consistent with economical working, the directors believing fully that if the mine should be worked at all it should be done vigorously and systematically, and if there is nothing of value there the sooner it is proved so the better for all concerned.

It is needless to say that so far the workings have been a grevious disappointment to all interested, and certainly to none more so than your directors, for it has always been and still is fully believed by them that somewhere in the Pewabic territory there are large deposits of copper, and every endeavor has been made to find them, but so far unsuccessfully. Our agent, Captain Johnson Vivian, is a thorough, practical miner, familiar with every detail of mining business, both on surface and underground, and we have full confidence that he has done all in his power and all that any one could have done to prove up the different levels, drifts, etc., of the mines.

The fact of the complete success of the Franklin proves his
24 ability beyond a doubt. The same lode or a lode in nearly
the same situation in Quincy has proved rich and very valuable on their property nearly adjoining us, while in Pewabic it is hardly worth working. We shall continue to test it to prove fully its value, and we may at any time strike into a similar rich and valuable body of ground that would quickly repay all expenditures. That there is no occasion to despair of finding it is needless to say, for there have been times during the existence of the Quincy when that mine showed no better for the future than the Pewabic does today; but the management were fortunate in having ample funds in the treasury, which they used for explorations and continued working the mines. This result has showed the wisdom of their course. Annexed will be found a statement of receipts and expenditures, and also of assets and liabilities at the close of the year.

Respectfully submitted by the directors.

D. L. DEMMON, *Treasurer.*

Office of the Pewabic Mining Company, Houghton county.

HANCOCK, MICH., *January 10th*, 1884.

D. L. Demmon, Esq., treasurer.

DEAR SIR: The following report relates to the work performed during the year ending December 31st, 1883, which I respectfully submit for your consideration:

Surface Work.

Nothing of importance has been done in this department except the erection of a stone boiler-house 60 x 36 feet, which is large enough for four boilers; two only occupy this building at present, which, together with the other four that have been in use for some years, are equal to the requirements of our machinery.

25

Machinery.

The hoisting and pumping engine, as well as the one that operates the man engine, are all in good running order. The man engine has been extended from the sixteenth to the eighteenth level, to which point it is working very satisfactory. During the last two or three years we have at odd times been short of feed-water for the boilers, especially during the winter season, and, owing to the very dry summer, we were compelled to haul water last fall with teams to supply our boilers.

To obviate this difficulty in the future we have put up a steam pump and laid a mile of four-inch pipe, leading from the mill to the mine, to force water from the lake, which will be in operation in a few days, and will doubtless supply our wants in this direction.

One-half of the cost of the water works has been borne by the Franklin mine, which has suffered in like manner.

Stamp-mill.

Two heads, with all the necessary machinery, are in very fair working condition, and performed the service required of them, all things considered, quite satisfactory. The other two heads, as noted in my report last year, will require a good deal of repair in order to put them in good working condition, but until the mine is able to furnish more rock we shall not require any more stamping power.

Mining Work.

No. 6 shaft has been sunk from the thirtieth to within a few feet
of the thirty-fourth level. The lode for the entire distance is from
eight to twelve feet in width, and from time to time gave promise
of again becoming productive, but, I am sorry to say, the
26 repeated assurance in this direction resulted in the same leanness which characterized this opening from the twenty-fifth level. The total distance sunk from the twenty-fifth level to the present bottom is 743 feet, all of which, except a few fathoms in and just below the thirtieth level, where we found some large masses of copper, is too poor to stope.

The openings made during the past year, both on the main and east lode, together with the cross-cutting and the fathoms stoped, with cost of same, are as follows:

Sinking shafts 352.1 feet and 396.2 feet winzes.......	$12,404	70
Drifting on different levels 2,546 feet....	32,803	66
Cross-cut east on several lodes, 344.7 feet........	4,703	30
Cross-cut west on several lodes, 92 feet..............	1,267	69
Total for openings	51,179	35
And for stoping 2,953¾ fathoms................	40,774	68
	91,954	03

And the expense of entire treatment of 57,677 tons of rock stamped, including taxes, insurance, etc., was..	52,980 60
Making a total of..........................	$144,934 63

In the several levels from the twenty-seventh to the thirtieth we have opened, as stated above, 2,546 feet, all of which drifts have exposed, with slight variation, a well-defined lode from seven to twelve feet in width, and at all times carrying some copper, but unfortunately, with but little exception, too poor to pay for stoping. In the back of the nineteenth level, south of the shaft, and in the backs of the thirty-second, thirty-first, and thirtieth levels, north of the shaft, we have done some stoping, part of which paid fairly well, but I regret to say that the amount of productive ground is too limited to make much of a show in the way of product or profit. The copper taken from the back and bottom of the thirtieth level in and on both sides of the shaft was chiefly in masses, the largest of which was about twenty tons, with smaller ones, running from two or three tons down to one thousand pounds, making at least
27 seventy-five or eighty tons, part of which was removed in December, 1882.

In cross-cutting east, at the thirty-first and thirty-second lodes, seventy feet in the former and eighty-six feet in the latter, we found a very good-looking lode which is from eight to fifteen feet in width.

At the former level in opening 199 feet some very fair stamp-rock from time to time was found; also some little barrel-work, together with two masses of copper about 1,500 pounds each. In the latter level we have opened on the lode thirty-three feet, which has exposed some stamp-copper only. We expect to reach this lode with a cross-cut at the thirty-third level in a few days. As far as seen this lode will not pay to work, but as it appears to carry all grades of mineral and is large and has a very good appearance, etc., we cannot give any valid reason why it should not at some point be as productive as the east lodes in the Quincy, which were and are still extremely rich. In the cross-cut east, at the sixteenth level, also in the cross-cut west in the main lode, made at the twenty-sixth, thirtieth, and thirty-second levels, nothing of value was found. The lode in the hanging wall, or west of the main deposit, which was reached by the above-mentioned cross-cut, is regular and contains a little copper, but is too lean to work.

We are now stoping in the back of the twenty-ninth and thirty-second levels, as well as the thirty-first level on the new lode, which are yielding low-grade stamp-rock, with a little barrel copper. The stoping ground that was near the boundary line of the Quincy, in the backs of the eighteenth and nineteenth levels, has been exhausted.

For the information of those stockholders who will not have an opportunity to see the map of the mine I submit the following description of the openings, together with the amount of unexplored territory on each side of the shaft at the several levels. The

28 twenty-seventh level has been extended south 30 feet and is now 275 feet from the Quincy line.

The twenty-eighth level has been extended north 118 feet and south of the shaft 150 feet, and is now distant from the line with Quincy 225 feet and from Franklin 60 feet. The twenty-ninth level has been extended south 428 feet and north 55 feet. The former is 80 feet from the Quincy and the latter 270 feet from Franklin line; the thirtieth level extended south of the shaft 240 feet and north of same 315 feet, bringing the former within 390 feet of the Quincy and the latter 120 feet of Franklin boundary line. The thirty-first level has been opened south 120 feet and north 315 feet, and is now 600 feet from the line with Quincy and 270 from Franklin. The thirty-second level has been opened north 135 feet and south 93 feet. There is south to the line with Quincy 660 feet and north to line with Franklin 510 feet. The thirty-third level has been opened 15 feet south and north of shaft 45 feet. From Quincy line it is 770 feet and from Franklin 705 feet. At the thirty-fourth level we have got a length of about 1,670 feet, which is within one hundred feet of the length of the productive ground of the Franklin mine.

Future Prospects.

Taking into consideration the new lode, which in character is similar to those on the foot-wall side of the main deposit at the Quincy, I think our prospects the coming year are a little brighter than they were in 1883. This is not allowing for the chances of developing valuable ground, provided the openings are pushed, in the course of the main lode through the unexplored territory described and noted above.

The cost of the surface improvements, new machinery, etc., for the year was $10,977.61. Capt. Thomas Whittle, who is in charge of the mining department, and Mr. Joseph H. Vivian, the clerk, have worked earnestly to promote the interest of the company.

I am yours respect*ive*ly,
J. VIVIAN,
Superintendent.

29 *Cash Receipts and Expenditures of the Pewabic Mining Company for the Year Ending December 31st, 1883.*

Cash on hand December 31st, 1883	$16,246 96
" received from sale of 1,239,740 lbs. copper, 15.912	197,262 36
" received from loans	237,251 02
" " " assessments	88,324 00
" " " sale of silver	566 54
" " " sale of forfeited stock	3,222 85
" " " sale of supplies at mine	2,100 00
" " " interest	918 62
	$545,892 35

CONTRA.

Cash paid loans	$271,000 00
" " mine agent's draft	240,060 53
" " interest, insurance, and storage	4,865 90
" " smelting and freight	19,119 53
" " expense, brokerage, copper, charges, taxes, etc.	6,863 34
" " sundry parties for forfeited stock	2,589 70
Cash on hand December 31, 1883	1,393 35
	545,892 35

E. & O. E.
January 1, 1884.

D. L. DEMMON, *Treas.*

30 *Statement of Assets and Liabilities of the Pewabic Mining Company January* 1*st*, 1884.

Assets.

Copper on hand, 504,652 lbs. ay. 14⅞	$75,066 99
Cash on hand	1,393 35
Due from assessments (since paid)	14,148 00
Supplies at mine	53,828 42
	$144,436 76

CONTRA.—Liabilities.

Loans	$55,751 02	
Drafts outstanding	23,835 91	
Forfeited stock (due for)	1,818 75	
Smelting, Nov. and Dec.	1,564 74	
Freight	258 48	
Liabilities at mine	21,526 25	
		104,755 15
Balance assets over liabilities		$39,681 61

E. & O. E.
January 1, 1884.

D. L. DEMMON, *Treas.*

Yield of mineral from rock, 1.24 per cent., or 1,434,385 lbs.
Yield of ingot from mineral was 81.68 per cent., or 1,171,847 lbs.

Ex. C.

Office of Pewabic Mining Company (Howard Bank building), No. 19 Congress street.

Boston, Mass., *February* 19, 1884.

Stockholders' Meeting.

Notice is hereby given that the annual meeting of the stockholders of the Pewabic Mining Company of Michigan will be held at the office of the company, at No. 19 Congress street, in the city of Boston, State of Massachusetts, on Wednesday, 26th day of March, A. D. 1884, at 12 o'clock noon.

31 The object of holding said meeting is as follows:

1st. To elect a board of directors for the ensuing year.

*2nd. To authorize a sale and conveyance of all the real and personal property of the company.

3rd. To authorize a sale and conveyance of all the real and personal property of the company to a new corporation, to be organized under the mining laws of Michigan, and to receive in payment therefor the capital stock of said new corporation.

4th. To authorize the board of directors to settle and close the business of the company.

By order of the board of directors:

D. L. DEMMON, *Secretary.*

As it is imperative that a majority of the stock should be represented to make a legal meeting, stockholders who cannot be present are requested to send their proxies to the secretary of the company to be voted on as they may request.

D. L. DEMMON, *Secretary.*

(Written on margin of leaf:)

The transfer books of the company will be closed from Satur. p. m., March 22nd, 1884, to Thursday a. m., March 27th, 1884.

State of Michigan, Auditor General's Office,
Lansing, Mich., *March 7th*, 1884.

Series No. 5214.

Messrs. Mason & Smith, No. 4 Exchange court, New York, N. Y.:

Yours of February 29th is at hand asking for a copy of the report of the Pewabic Mining Co., filed last July. The last report received from that company is the one for the year ending December 31, 1877, which was filed December 31, 1879. A copy of this will be furnished if desired. The cost will be $1.00.

32 Very respectfully, H. R. PRATT,
Dep. Aud. Gen.

"Ex. D."

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* "The charter of the company having expired by limitation, it is necessary, in order to reorganize, to pass the above votes (2nd, 3rd, and 4th)."

EXHIBIT "E."

Articles of Association of the Pewabic Copper Company.

Article first.

The name of the corporation shall be the Pewabic Copper Company. It is formed for the purpose of carrying on the business of mining copper, silver, and other ores and minerals.

It is organized under an act of the legislature of the State of Michigan entitled "An act to revise the laws providing for the incorporation of companies for mining, smelting, or manufacturing iron, copper, silver, mineral coal, and other ores or minerals and to fix the duties and liabilities of such corporations," approved May 11th, 1877, and the acts amendatory thereof and supplemental thereto.

Article second.

The capital stock of the corporation shall be one million dollars, divided into forty thousand shares of twenty-five dollars each.

Article third.

No cash is actually paid in on the capital stock. The cash value of the real and personal property conveyed to the company contemporaneously with its organization is the sum of fifty thousand dollars.

Article fourth.

The names of the stockholders, with their respective residences and the number of shares held by each, are as follows:

Names.	Residence.	No. shares.
Daniel L. Demmon	Boston, Mass	20,000
Thos. H Perkins	" "	10,000
Alden B. Butterick	Lowell, "	10,000
		40,000

33 Article fifth.

The business office of this corporation shall be located in the city of Boston, State of Massachusetts. Its office for the transaction of business in the State of Michigan shall be located at its mine, in Houghton county, Michigan.

Article sixth.

The business of this corporation is to be carried on in the county of Houghton, State of Michigan.

Article seventh.

There shall be five directors of this corporation. The directors for the first year shall be the following persons: Thomas H. Perkins, Henry Billings, of Boston, Mass.; Alden B. Butterick, of Lowell, Mass.; Daniel L. Demmon, of Boston, Mass., and Johnson Vivian, of Hancock, Mich.

Article eighth.

This corporation shall exist for the period of thirty years from the date hereof, unless sooner dissolved.

In witness whereof we have hereunto signed our names this twenty-sixth day of March, A. D. 1884.

T. H. PERKINS.
A. B. BUTTERICK.
D. L. DEMMON.

In presence of—
J. H. CHANDLER.
C. H. REMIELS.

STATE OF MASSACHUSETTS, }
County of Suffolk, } *ss:*

On this twenty-sixth day of March, A. D. 1884, before me, a notary
public in and for said county, personally appeared Thos. H. Per-
kins, Alden B. Butterick, and Daniel L. Demmon, known to me to
be the persons described therein and who executed and
34 signed the foregoing articles of association, and severally ac-
knowledged the same to be their free act and deed for the
uses and purposes therein expressed.

Witness my hand and official seal the day and year last aforesaid.

[SEAL.] WILLIAM BREDS,
Notary Public in and for Suffolk County.

STATE OF MICHIGAN, }
Office of the Secretary of State, } *ss:*

I, Harry A. Conant, secretary of state of the State of Michigan, do hereby certify that I have compared the annexed copy of articles of association of the Pewabic Copper Company with the original filed in this office March 28th, 1884, and that it is a true and correct transcript therefrom and of the whole of such original.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Michigan, at Lansing, this [SEAL.] 29th day of March, in the year of our Lord one thousand eight hundred and eighty-four.

HARRY A. CONANT,
Secretary of State.

STATE OF MICHIGAN, } ss:
County of Houghton, }

Jacob Dolf, being by me duly sworn, doth depose and say that on the fourth day of April, A. D. 1884, at The Pewabic mine, in said county and State, he served the annexed bill of complaint on The Pewabic Mining Company, one of the defendants therein named, by delivering to Johnson Vivian, who was then and there the agent of said defendant, a true copy of the same personally.

35 Deponent further says that at the same time and place he served the annexed bill of complaint on The Pewabic Copper Company, one of the defendants therein named, by delivering *the* Johnson Vivian, who was then and there the agent of said Pewabic Copper Company, a true copy of the same personally.

Deponent further says that at the same time and place he served the annexed bill of complaint on Johnson Vivian, one of the defendants therein named, by then and there delivering to said Vivian personally a true copy of the same.

Deponent further says that at said time and place he served personally on each of said defendants a true copy of the restraining order issued in this cause, and that he served on each of said defendants a notice of motion for injunction and appointment of receivers.

JACOB DOLF.

Subscribed and sworn to before me this 4th day of April, A. D. 1884.

[SEAL.] CHARLES D. HANCHETTE,
Notary Public, Houghton County, Michigan.

Let a restraining order issue, as herein prayed, to continue in force pending the hearing and decision of the motion for preliminary injunction herein prayed.

S. L. WITHEY,
Dist. Judge.

March 31, 1884.

I acknowledge myself security for all costs for which the complainants may become liable on this cause.

DON M. DICKINSON.

March 3, 1884.

(Endorsed:) In the circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas Henry Mason, William Hart Smith, and Edward Mussey and Sullivan Ballou *vs.* The Pewabic Mining Company, The Pewabic Copper Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Butterick, and Daniel L. Demmon. Bill of complaint. Filed March 31, A. D. 1884. H. M. Hinsdill, clerk. Dickinson, Thurber & Hosmer, sol'rs for complainants. Charles P. Crosby, of counsel. F. B. Dunstan, of counsel.

36 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

The answer of The Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Daniel L. Demmon, and The Pewabic Copper Company, defendants, to the bill of complaint of Thomas H. Mason, William Hart Smith, and Sullivan Ballou, complainants.

These defendants, now and at all times saving and reserving to themselves all benefit and advantage of the many errors and insufficiencies in the said bill of complaint contained, for answer thereunto or to such parts there- as they are advised is material for them to make answer unto, hereby answering say:

1. They admit that Thomas Henry Mason and William Hart Smith are copartners doing business in the city, county, and State of New York, and say that their business is that of stock brokerage carried on in said city. They also admit that said complainant, Ballou, resides in said city of New York; that the defendant The Pewabic Mining Company is a body corporate created and existing under the laws of the State of Michigan; that its principal office is as stated in said bill; that the defendants Vivian, Billings, Butterick, and Demmon reside at Boston, in the State of Massachusetts, and that defendant Vivian resides at Hancock, Michigan, but they deny that these defendants, Billings, Perkins, Butterick, Demmon, and Vivian, maintain or have an office or carry on business at said Hancock. They admit the incorporation of the Pewabic Copper Company, as stated in said bill; and these defendants allege on information and belief that no other stockholders of said Pewabic Mining Company except Edward W. Mussey, named in said bill, desire to come in and join the complainants in their said suit.

37 2. They admit the allegations set forth in paragraph one of said bill.

3. They admit that the said defendant, The Pewabic Mining Company, entered upon the enjoyment of its franchises and commenced business in accordance with the objects of its organization; that it acquired a large amount of real estate in the county of Houghton, upon which it carried on the business of mining; that it acquired and expended therefor the greater part of its capital, which has been called in, upon buildings, &c., and that it continued to own and possess said lands and carried on active operations for the period of thirty years succeeding its organization, and defendants also admit that the board of directors in its report for 1882 set forth a statement, of which a correct copy is given in said bill of complaint: that the same constitutes a separate statement in said report and is given as a statement of production and cost of the same at the mine.

These defendants further admit that in the report on the 1st day of January, 1883, they admitted cash receipts during the preceding year of $678,928.14, but they further say that the allegations respecting the same in said bill do not give a full and correct copy of the said report and makes a separate table annexed to said report,

a full copy of which is hereto annexed as a part of this answer, marked Exhibit "A;" they admit that before such expenditures the mining property of said company was believed to be of considerable value. The defendants further admit that said report showed that the business had been carried on at a loss during the year 1882, and that the amount of said loss is shown by said Exhibit "A." Defendants also admit that no dividends have been paid for the period of five years last past, and that assessments have been levied by the order of the board of directors and paid by the stockholders, as averred in said bill. These defendants also admit
that at the annual meeting held in 1883 directors were
38 elected, as therein alleged; that said directors, Demmon and
Billings, were directors of the preceding year, together with Vivian, of Hancock, who had been agent of the mine at Hancock, Michigan. These defendants further say that in the month of November, 1879, the old mine of the company having become unprofitable and practically exhausted, the company purchased all of that portion of what is known as the "Pewabic vein" or lode of copper lying under the northeast quarter of section twenty-three, township No. 56 north, of range No. 34 west, for the sum of two hundred and seventy-five thousand dollars, and the company has since been engaged in opening and exploring said vein, and that the expenses thereof have been large, such as usually attend mining enterprises before the same can be brought to profitable results, and that this explains why there has been no recent dividends and why some assessments have been made necessary; that the Quincy Mining Company lies directly southwest of the new mine of the Pewabic and the mine of the Franklin Company is directly northeast, all of which is shown more particularly by a map or diagram of the veins worked by said companies, hereto attached and marked "Exhibit B."

4. These defendants, further answering, say that they admit that during the year 1883 said Perkins, Billings, Butterick, Demmon, and Vivian continued to act as the board of directors of said company, and said Vivian acted as the agent of the company's mine; that they continued the business of said company substantially as it had been theretofore conducted, and did not attempt during said year to settle up or close its affairs, and that defendants continued its business in the manner and to the extent as full- and accurately set forth in said "Exhibit B," but they deny that the details of said business are set forth with entire accuracy in the special allegations in said bill. They further deny that in so acting said directors had any fraudulent schemes or objects whatever; they deny that their
action was without the consent or knowledge of the stock-
39 holders other than the complainants, and that as to the
consent or knowledge of the complainants these defendants say that the complainants acquired their stock subsequent to the year 1883, and if they had no knowledge of and gave no consent to the management of the business of said company it was simply because they then had nothing whatever to do with the affairs of

36 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

The answer of The Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Daniel L. Demmon, and The Pewabic Copper Company, defendants, to the bill of complaint of Thomas H. Mason, William Hart Smith, and Sullivan Ballou, complainants.

These defendants, now and at all times saving and reserving to themselves all benefit and advantage of the many errors and insufficiencies in the said bill of complaint contained, for answer thereunto or to such parts there- as they are advised is material for them to make answer unto, hereby answering say:

1. They admit that Thomas Henry Mason and William Hart Smith are copartners doing business in the city, county, and State of New York, and say that their business is that of stock brokerage carried on in said city. They also admit that said complainant, Ballou, resides in said city of New York; that the defendant The Pewabic Mining Company is a body corporate created and existing under the laws of the State of Michigan; that its principal office is as stated in said bill; that the defendants Vivian, Billings, Butterick, and Demmon reside at Boston, in the State of Massachusetts, and that defendant Vivian resides at Hancock, Michigan, but they deny that these defendants, Billings, Perkins, Butterick, Demmon, and Vivian, maintain or have an office or carry on business at said Hancock. They admit the incorporation of the Pewabic Copper Company, as stated in said bill; and these defendants allege on information and belief that no other stockholders of said Pewabic Mining Company except Edward W. Mussey, named in said bill, desire to come in and join the complainants in their said suit.

37 2. They admit the allegations set forth in paragraph one of said bill.

3. They admit that the said defendant, The Pewabic Mining Company, entered upon the enjoyment of its franchises and commenced business in accordance with the objects of its organization; that it acquired a large amount of real estate in the county of Houghton, upon which it carried on the business of mining; that it acquired and expended therefor the greater part of its capital, which has been called in, upon buildings, &c., and that it continued to own and possess said lands and carried on active operations for the period of thirty years succeeding its organization, and defendants also admit that the board of directors in its report for 1882 set forth a statement, of which a correct copy is given in said bill of complaint: that the same constitutes a separate statement in said report and is given as a statement of production and cost of the same at the mine.

These defendants further admit that in the report on the 1st day of January, 1883, they admitted cash receipts during the preceding year of $678,928.14, but they further say that the allegations respecting the same in said bill do not give a full and correct copy of the said report and makes a separate table annexed to said report,

a full copy of which is hereto annexed as a part of this answer, marked Exhibit "A;" they admit that before such expenditures the mining property of said company was believed to be of considerable value. The defendants further admit that said report showed that the business had been carried on at a loss during the year 1882, and that the amount of said loss is shown by said Exhibit "A." Defendants also admit that no dividends have been paid for the period of five years last past, and that assessments have been levied by the order of the board of directors and paid by the stockholders, as averred in said bill. These defendants also admit
that at the annual meeting held in 1883 directors were
38 elected, as therein alleged; that said directors, Demmon and
Billings, were directors of the preceding year, together with Vivian, of Hancock, who had been agent of the mine at Hancock, Michigan. These defendants further say that in the month of November, 1879, the old mine of the company having become unprofitable and practically exhausted, the company purchased all of that portion of what is known as the "Pewabic vein" or lode of copper lying under the northeast quarter of section twenty-three, township No. 56 north, of range No. 34 west, for the sum of two hundred and seventy-five thousand dollars, and the company has since been engaged in opening and exploring said vein, and that the expenses thereof have been large, such as usually attend mining enterprises before the same can be brought to profitable results, and that this explains why there has been no recent dividends and why some assessments have been made necessary; that the Quincy Mining Company lies directly southwest of the new mine of the Pewabic and the mine of the Franklin Company is directly northeast, all of which is shown more particularly by a map or diagram of the veins worked by said companies, hereto attached and marked "Exhibit B."

4. These defendants, further answering, say that they admit that during the year 1883 said Perkins, Billings, Butterick, Demmon, and Vivian continued to act as the board of directors of said company, and said Vivian acted as the agent of the company's mine; that they continued the business of said company substantially as it had been theretofore conducted, and did not attempt during said year to settle up or close its affairs, and that defendants continued its business in the manner and to the extent as full- and accurately set forth in said "Exhibit B," but they deny that the details of said business are set forth with entire accuracy in the special allegations in said bill. They further deny that in so acting said directors had any fraudulent schemes or objects whatever; they deny that their
action was without the consent or knowledge of the stock-
39 holders other than the complainants, and that as to the
consent or knowledge of the complainants these defendants say that the complainants acquired their stock subsequent to the year 1883, and if they had no knowledge of and gave no consent to the management of the business of said company it was simply because they then had nothing whatever to do with the affairs of

said company; that the complainants Mason and Smith became stockholders on the 8th day of February, 1884, and the complainant Ballou on the 17th day of March, 1884. These defendants further show that the fact that the charter had expired was, so far as they know or believe, not known to any stockholder before the summer of 1883, when the fact was discovered by Mr. Demmon; that no objection being made by any stockholder it was deemed best for the interest of all concerned to continue the business until the next annual meeting of the company, and no objection to such course was ever made by any stockholder or any other person whatever before the time of holding such annual meeting, to wit, the 26th of March last.

5. These defendants admit the matters set forth in the fourth allegation of complainants' said bill of complaint.

6. As to the matters set forth in the fifth article of said bill these defendants show that said Mason and Smith became stockholders of said company on the eighth day of February, 1884; that said Sullivan Ballou became a stockholder on the seventeenth day of March, 1884, and so far as these defendants know and believe they never owned any stock in said company before that time. Defendants admit that all dues and assessments upon said stock have been paid; that as to the reasons why Edward W. Mussey has not been made a party to this bill of complaint these defendants have no knowledge, nor do they know that they have any concern, inasmuch as said Mussey is not in fact made a party to said bill of complaint in any way. These defendants admit that the complainants and all other stockholders of said company received the notice 40 marked Exhibit "C," and they further show that said notice was published in the Portage Lake Mining Gazette, a public newspaper printed and circulating in the county of Houghton, where said mine is situated, for five successive weeks, commencing on the 14th day of February, 1884, and ending upon the 13th day of March, 1884, and that a copy of such notices was also sent by mail to each stockholder of the company more than twenty days before the time of such meeting. These defendants deny all of the allegations set forth in article seventh of said bill of complaint except as hereinafter stated. These defendants admit that some time in February last and immediately after the complainants Mason and Smith obtained their stock they wrote to the defendant Demmon for a list of the stockholders of said company, to which request he never made any reply, and that whether the complainants have applied to the auditor general, as in said bill of complaint is alleged, they have no knowledge or information save by said bill of complaint.

8. These defendants further say and admit that the complainants except Mason attended personally the annual meeting on the 26th day of March, 1884, and that a full list of the stockholders of the company was produced at said meeting and that complainants were at liberty to inspect the same; that of the stock of the company about twenty thousand shares were represented by about fifty stock-

holders present in person; that the balance of shares voted were represented by written proxies, and they further admit the statement of the proceedings of said meeting as set forth in said bill of complaint as nearly correct, but that a true and correct report of said proceedings in all respects is set forth in a certified copy of the record of the proceedings of said meeting, hereto annexed and marked Exhibit "C."

These defendants further admit that for the period of two years last past the said defendants, Perkins, Billings, Butterick, Demmon, and Vivian, have managed as directors of said company its affairs.

They deny that it has been managed by any other persons.
41 They deny it has not been managed in the interest of the general body of stockholders or that it has been managed in the interest of a syndicate of stockholders so as to gain for such syndicate the entire property and assets of the company, or managed in the interest of said syndicate to gain control of said company. They deny it has been managed to depress the stock of said company through a system of discouraging reports or by making assessments or by any concealment of the true value of the assets or condition of the company or by procuring a sale of the property at private sale for less than its value or by any means whatever. They deny the existence of any such syndicate as alleged in said bill of complaint. On the contrary, these defendants aver that the affairs of said company have been managed with the utmost fidelity to the interest of its shareholders; that no concealment or misrepresentation of its condition or value of the property has ever been at any time made by them; that they have ever made any discouraging reports not required by the facts; that they have never levied any assessments for any purpose except as required by the necessities of the company, and that in one word they have labored throughout to promote the interest of the company to develop and preserve its property and to retain and continue it for the benefit of all of its stockholders, and that since it was discovered that the charter of the company had expired and that some new arrangement must necessarily be made they have faithfully endeavored to resist any and every scheme by which the property should be sacrificed or by which it should be diverted from the present stockholders of said company, and, as the records will show, that they have endeavored by the formation of a new company to continue to each and every shareholder the same rights that he had in the old company and in the property of the old company without any impairment whatever, and no complaint was ever made prior to the filing of this bill of complaint by any stockholder of the conduct of said directors in the management
42 of said mine or of their -fulness regarding the interests of the
stockholders, and that the first difference of opinion among the stockholders, so far as defendants are aware, first arose about the time of the annual meeting in March, 1884, with reference to the method of winding up the affairs of the company and of disposing of the property; which difference is set out in the record of said meeting heretofore referred to.

10. These defendants admit the formation of a new corporation called the Pewabic Copper Company, and that it- articles of association were filed in the office of the secretary of state of Michigan, as in said bill is alleged, and that "Exhibit E" is a copy of said articles, but these defendants deny that it was in pursuance of a fraudulent scheme alleged in said bill of complaint or of any fraudulent scheme whatever, or that it had any purpose whatever except that of continuing and preserving to each shareholder of the old Pewabic Company the same interest in the new company unimpaired, and that it was, as defendants believed, for the best interest of all the shareholders of the said company; and these defendants admit that it was the intention that the real and personal property of said Pewabic Mining Company should be conveyed to said newly formed company for the price of fifty thousand dollars, and also for the further consideration that the said newly formed company should assume and pay the entire indebtedness of the old company that each of the shareholders of the old company should be entitled to the same interest in the new company if he so elected, but if he declined to take such interest in the new company he should be entitled to receive his *pro rata* of the purchase price and assets in money.

11. These defendants, further answering, say that they are not aware of any inability upon the part of the complainants to obtain any detailed description of the realty of said company or of its other property, the same being fully disclosed in the regular published reports of said company, and the deeds of its real estate being
43 duly recorded in the office of the register of deeds of Houghton county; that they admit that the same is of considerable value, but, estimated at the market price of the stock of said company at the time of said annual meeting, the same was about of the value of $50,000; that they are wholly unable to say what sum it will bring, if anything, if offered at public sale; that the complainants neither at said annual meeting or any other time ever made any offer to purchase said property or name any price therefor, or fix any value thereon or in any way intimate that the sum for which these defendants proposed to sell the same was an unfair or inadequate price therefor.

12. These defendants admit that the only meeting of the stockholders of said company since January 1st, 1883, have been the annual meeting in the year 1883 and the annual meeting on March 26th, 1884; but they deny expressly the averment in said bill that no meeting authorizing the purposes and objects of a majority of the stockholders, as appears by the proceedings of March 26th, has been had or called at any time or place; but aver that the notice of the meeting of March 26th, 1884, fully and distinctly stated the objects of said meeting, and that the proceedings of said meeting were in conformity thereto.

13. As to the allegations in the 13th article of said bill of complaint, these defendants submit that after the expiration of the charter of said Pewabic Mining Company their relations to the company

was not strictly that of trustees, but as managers of the affairs of said company under the direction of its stockholders for the purpose of closing up the business of said company and disposing of its property for the benefit of all concerned, and in that view and in that view alone they have acted in disposing of the property of said company under the direction of the shareholders by their vote in such way as they believed would secure to every shareholder his full and exact interest in said property, and that they have believed that the method adopted would prevent any sacrifice of the rights of each and all of the shareholders and prevent the property
44 from falling into hands of other persons or of rival companies, to the detriment of its stockholders.

14. These defendants, further answering, say that no conveyance of the assets of the property of said Pewabic Mining Company has been made, but they admit that it was the intention to convey said property to said new corporation for the price and consideration hereinbefore stated in this answer; that the same was intended for the purposes above set forth in this answer and for no other purpose or scheme, and they deny expressly that the same was in pursuance of the scheme alleged or intimated in said bill of complaint or that the same was intended to be or should be in fraud of the rights of the complainants or of any other stockholder whatever.

15. These defendants, further answering, say *they* the complainant Thomas H. Mason is the son of Thomas F. Mason, the president of the Quincy Mining Company, and is himself an*d* officer now in said company; that said Smith has long been connected in business with the Masons and acts in their interest; that at the said annual meeting in March, 1884, it was believed by a majority of the stockholders and was publicly charged at said meeting that the object of said Mason and Smith in bringing said property to a public sale was that in the uncertainty as to its value it would bring a very low price below $50,000, and that the same would be purchased by the Quincy Mining Company or by some person in their interest, and that to avoid this danger and consequent sacrifice of the rights of the majority of the stockholders a resolution for the sale of said property to another company in which each shareholder of the Pewabic Company might attain an interest equal to that he held in the old company was devised and adopted, and these defendants say that when such charge was publicly made at the meeting it was made in the presence and hearing of complainants Hart Smith and Sullivan Ballou, and that neither of said complainants made any denial whatever of the truth of such charge.

45 15. These defendants further say that in all things in this matter they have believed that they were proceeding lawfully, and in the method of making said sale they acted under the advice of counsel learned in the law; that they have acted in conformity with the wishes of a large majority of the stockholders of said company, and, as they believe, for the best interests of all the stockholders, considered as a body; that in no respect have they

done anything to impair or prejudice the just rights of any stockholder, and they respectfully submit that it would be greatly to the prejudice of the interests of the stockholders to divest them of the management and control of the affairs of said company and to place the affairs of said company in the hands of a receiver They show that to stop the working of said mine would injure the walls of the lodes and timbering, allow the same to fill with water, and thereby greatly depreciate the value of the property and work almost irreparable injury. They also show that the interests of the shareholders require that the mine should be worked to a certain extent until the same shall actually be disposed of and transferred to other owners, and that to restrain or prohibit such working would benefit no stockholder, but be to the general injury of all. These defendants also submit that they have no desire to dispose of said property in any unlawful or improper manner, and if the court should be of the opinion that their action in any respect in the past has been of doubtful validity they are ready promptly to conform to the opinion of the court and to be guided thereby in all future dealings with the property.

17. These defendants, further answering, aver that about two thousand shares of stock of the Pewabic Mining Company is owned by persons residing in the vicinity of its mine and familiar with its situation, management, prospects, and history; that all of said stock was represented at said meeting of March 26th either in person or by proxy, and that all but three hundred and twenty shares, owned by one party, voted for the resolutions transferring
46 the property to the new company, as hereinabove set forth;
and these defendants allege upon information and belief that the owner of said three hundred and twenty shares is an employee and under the influence and control of the Quincy Mining Company.

18. These defendants, further answering, say that the defendant Daniel L. Demmon was elected secretary and treasurer of said corporation in March, 1873, and that he has continued to be the secretary and treasurer of said company from that time; that among the books turned over to him by his predecessor was a book purporting to be the entire of the records of the meetings of the stockholders of said company, which books these defendants are ready to produce and prove; that the first record in said book is the record of a meeting held in March, 1859, and this defendant, Daniel L. Demmon, says that he had every reason to believe and did believe that that was about the time of the organization of the company, and therefore supposed that the charter did not expire until some time in 1888 or 1889.

19. These defendants, further answering, say that the directors of said company have during the time they have been such directors employed an auditor in the city of Boston to annually audit the accounts of said company; that such auditor for the last six years and upwards has been Douglass Frazar, who is now and has been

for some years the joint auditor of the Boston & Maine and the Eastern railroads; that said auditor has annually audited all the accounts of said company, including the stock ledger, and has made a written report of such auditing to the directors, which reports were immediately placed on file in the office of said company and are there still. These defendants, further answering, say that the capital stock of said company is one million dollars; that of that amount about four hundred and fifty thousand dollars have been assessed and paid into the treasury of the company, and has
47 been expended as hereinabove set forth; that these defendants cannot give now the exact amount, for the reason that the books of said company are in the office of said company in Boston, while these defendants, Demmon and Vivian, are in the city of Detroit; and these defendants aver and maintain that no other plan was so feasible, equitable, and just as that adopted by the stockholders at said meeting, and such was the opinion of more than two-thirds of its stockholders, as appears by the vote at said meeting, and such was the conclusion arrived at at said meeting after a full and free discussion of said matter.

20. These defendants, further answering, say that said Johnson Vivian, of his own knowledge, and the other defendants, upon information and belief, that said defendant Johnson Vivian has been engaged in copper mining at various mines upon Lake Superior for the past 31 years; that he has been superintendent of various mines in said district for the past 20 years; that for the past 10 years he has been agent and superintendent of the mine of the Pewabic Mining Company, under the direction of the directors of said company; that all the operations and business of said mine have been conducted in an economical, good, and minerlike manner; that said mine has at all times been conducted in the usual and skillful manner of the successful mines of Lake Superior; that he has kept the directors of said company fully informed from time to time as to what was being done and the appearances and prospects of the mine both by letters written from once to three times a week and by his reports made at stated periods, which letters and reports have been kept on file in the office of the company at Boston, Mass., subject to inspection of any director or stockholder of said mine.

21. These defendants further say that defendant Alden B. Butterick left his home in Boston on a visit to the South on the 27th day of March last, and there has been no opportunity to communicate with him since that time.

48 And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by said bill charged and not herein well and sufficiently answered, confessed, traversed, and avoided and denied is true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence

dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

DANIEL L. DEMMON.
THOS. H. PERKINS,
By his attorney-in-fact, DANIEL L. DEMMON.
HENRY BILLINGS,
By his attorney-in-fact, DANIEL L. DEMMON.
PEWABIC MINING COMPANY,
By D. L. DEMMON, *Secy.*
PEWABIC COPPER COMPANY,
By D. L. DEMMON, *Director.*
JOHNSON VIVIAN.
T. H. PERKINS,
President Pewabic Mining Co.
HENRY BILLINGS.

CHANDLER, GRANT & GRAY,
Sol'rs for Def'ts Demmon, Vivian, Perkins,
Billings, Pewabic Mining Co.
G. V. N. LOTHROP, *Of Counsel.*

Witness:
EDWARD J. JONES,
Notary Public, to T. H. P. and H. B.

49 EASTERN DISTRICT OF MICHIGAN, } *ss:*
County of Wayne, }

Daniel L. Demmon, of the city of Boston, Mass., and Johnson Vivian, of Hancock, Houghton county, Michigan, being duly sworn, depose and say that they are two of the defendants named in the bill of complaint filed in this cause, and said Daniel L. Demmon says that he is expressly authorized by Thomas H. Perkins and Henry Billings, two of said defendants, to affix their signatures to said answer in their behalf, and the said Daniel L. Demmon says that he is the secretary of the Pewabic Mining Company and a director of the Pewabic Copper Co., also two of said defendants, and as such is authorized to sign said answer in their behalf. Said Demmon and Vivian further say that they have read the foregoing answer signed by them and know the contents thereof, and that the statements therein contained are true of their own knowledge except as to those matters which are therein stated to be on information and belief, and as to those matters they believe it to be true.

DANIEL L. DEMMON.
JOHNSON VIVIAN.

Subscribed and sworn to before me this 8th day of April, 1884.

HERSCHEL WHITTAKER,
[SEAL.] *Notary Public, Wayne Co., Mich.*

50 (EXHIBIT "A.")

Statement of the Assets and Liabilities of the Pewabic Mining Company, January 1, 1883.

Assets.

Copper on hand, 572,509 lbs, 18c.	$103,051 62	
Cash on hand	16,246 96	
Due from assessments (uncollected)	22,472 00	
		$141,770 58

CONTRA—Liabilities.

Loans		$89,500 00
Drafts outstanding		19,474 26
Forfeited stock (due for)		1,185 60
Smelting Nov. and Dec.		2,957 54
Freight		970 70
		114,088 10
Balance of assets, Boston		27,682 48
Supplies at mine	58,699 26	
Less liabilities at mine	25,857 74	
		32,841 52
Total balance of assets over liabilities		60,524 00

E. & O. E.

D. L. DEMMON, *Treasurer.*

Boston, February, 1883.

51 EXHIBIT "A"—Continued.

Cash Receipts and Expenditures of the Pewabic Mining Company for the Year Ending December 31st, 1882.

Cash on hand January 1, 1882	$26,557 97
" received from sale of 1,328,496 lbs. copper at $18\frac{350}{1000}$	243,777 05
" received from loans	349,441 53
" received from assessments	57,528 00
" received from sale of silver	753 97
" received from interest	785 63
" received from rebate on frieght	83 99
	$678,928 14

CONTRA.

Cash paid loans	$358,916 53
" " mine agent's drafts	254,802 66
" " interest	9,193 53
" " insurance and storage	1,044 49
" " smelting and freight	28,324 19
" " expense, brokerage, copper, charges, taxes, etc.	10,399 78
Cash on hand January 1, 1883	16,246 96
	$678,928 14

E. & O. E.
February, 1883.

52 EXHIBIT "A"—Continued.

Extraordinary Expenses.

Buildings.

Addition to No. 6 shaft-house	$1,049 40
Engine-house No. 6 shaft, with foundation, etc.	750 00
Mining captain's office	350 00
Oil-house	300 00
3 dwelling-houses for assistant mining captain and engineer	2,825 92
Clerk's office and warehouse	597 75
2 kitchens to dwelling-houses	128 49
Repairs to dwelling-houses and barns	3,411 74
Carpenter shop, lumber yard, and iron-room	1,200 00
Rock-bin, snow-shed, and trestle-work	1,704 80
Snow-shed over incline road	68 70
Locomotive-house	580 86
Drum-house and machinery at incline	1,424 64
Trestle-work at incline	561 47
Blacksmith shop	225 00
Compressor-house, with foundation for machinery, etc.	1,750 00
Wood dock at lake	115 00
Repairs to man-engine house	400 00
Repairs and changes to boiler-house	150 00
Repairs and changes to miners' change-house	200 00
Water cistern, foundation, pipes, etc.	400 00
	$18,193 77

53 Amount brought forward $18,193 77

Tools and machinery.

17 Rand drills	6,723 00
Duplex air-compressor	5,738 72
Air pipe for same, labor, etc	4,575 00

Two Blake rock-breakers, shafting, etc.	$2,525 00
Cameron feed-pump	265 00
2 new boilers, fronts, pipe, etc.	3,350 00
1 heater and pipe	300 00
Repairing and replacing 2 old boilers	2,510 94
Hose reel and 400 feet 1½-in. hose	325 00
Injectors and lubricators	218 00
Repairs and alterations to hoisting engine	1,600 00
3 Parry engines for hoisting rock in mine	1,000 00
1 new skip	375 00
Man engine	14,163 85
Now tools in machine shop	1,951 30
Jack-screws, blocks, wrenches, etc.	300 00
	$45,920 81

Stamp-mill.

1 steam pump	$2,036 45
1 steam pump for feeding boilers	355 00
2 iron sills for foundation of heads	702 40
2 guides, capd., etc., for stamp-shaft	456 23
New tools for machine shop	2,000 00
11 washing machines	810 00
Labor and supplies in repairing mill	4,871 60
New boiler-house	974 62
	$12,206 30

Amount carried forward $76,320 88

54 Amount brought forward $76,320 88

Mine work.

Repairing No. 6 shaft and other parts of the old mine.	4,750 00
Exploring with diamond drill	2,839 94
Sinking 375 feet of shaft in unproductive ground. 18.22 p'r ft.	6,832 50
Sinking 375 feet of winzes in unproductive ground at $15.00 per foot	5,925 00
Drifting 1,800 feet ditto	25,236 00
Cross-cuts to west lode, 126½ feet, @ $13.50	1,707 50
Drifting on west lode, 55 feet, @ $12.00	660 00
	$47,950 94

Surface work.

Repairing railroad to mill	$1,613 00
Building dam for feed-water	600 00
Making wood yard	400 00
Fencing and making roads	500 00
Stumpage paid, wood still standing, which will be cut next year	3,240 00
	$6,353 40
Total	$130,625

J. VIVIAN, *Agent.*

(Here follows diagram marked p. 54*a*.)

55 *Copy of Minutes of Annual Meeting of the Pewabic Mining Co. Held at Boston, Mass., March* 26, 1884.

The annual meeting of the stockholders of the Pewabic Mining Co. was held this day agreeable to the following notice, which was published in due form as required by law and a printed copy of which was mailed to the address of each stockholder:

Office of Pewabic Mining Company (Howard Bank building), No. 19 Congress street.

BOSTON, MASS., *February* 19, 1884.

Stockholders' Meeting.

Notice is hereby given that the annual meeting of the stockholders of the Pewabic Mining Company of Michigan will be held at the office of the company, at No. 19 Congress street, in the city of Boston, State of Massachusetts, on Wednesday, the twenty-sixth day of March, A. D. 1884, at twelve o'clock, noon.

The object of holding said meeting is as follows:

1st. To elect a board of directors for the ensuing year.

*2nd. To authorize a sale and conveyance of all the real and personal property of the company.

3rd. To authorize a sale and conveyance of all the real and personal property of the company to a new corporation to be organized under the mining laws of Michigan and to recieve in payment therefor the capital stock of said new corporation.

4th. To authorize the board of directors to settle and close the business of the company.

By order of the board of directors.

D. L. DEMMON, *Secretary.*

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* "The charter of the company having expired by limitation, it is necessary in order to reorganize to pass the above votes (2nd, 3rd, and 4th).

56 As it is imperative that a majority of the stock should be represented to make a legal meeting, stockholders who cannot be present are requested to send their proxy to the secretary of the company, to be voted on as they may request.

The transfer books of the company will be closed from Saturday p. m., March 22nd, 1884, to Thursday a. m., March 27th, 1884.

D. L. DEMMON, *Secretary.*

The meeting was called to order at the time appointed, Mr. Thos. H. Perkins, president, presiding. The call for the meeting was read by the secretary, and in order to ascertain if a quorum was present all parties were requested to file proxies held by them with the secretary. After checking same by stock-list the secretary reported that at least 30,000 shares were represented, which was more than enough for the transaction of business.

The following stockholders were present in person or represented by proxy duly filed:

Albert, J. W.	50
Brewer, J. P. & ag't	1,584
Brown, Riley & Co.	290
Brooks, Geo. C.	50
Bartholomaw, E. T.	50
Butcher, R. & Co.	300
Barker, Geo. F.	100
Briggs, W. C.	115
Barnard, Chas. A.	200
Billings, Henry	25
Brooks, J. F.	75
Boyden, David	60
Butterick, A. B.	100
" F. A.	250
Brewster, Cobb & Estabrook	150
Ballou, Sullivan	100
Barnes, Thurber Weed	114
Church, Henry A.	22
Carr, Geo. W.	150
Champney, J. H.	301
Clark, O. F.	100
Champney, M. A.	100
Chase, Chas. A.	20
Cotton, W. C.	200
Condon, Wm.	100
Cutter, J. P.	100
Coborn, A. A	150
Cooch, Z. H	100
Demmon, D. L. & ag't	1,114
Downer & Co.	110
Davis, F. A., ag't	200
57 Demmon, R. A	25
Dennison, J. N	1,000

Dexter, W. S., treas	775
Daley, John	25
Downing, Alfred	50
Eschweler, Hannah L	25
Thurber, T. F	188
Farrington, D. W. C	200
Goodwin, John A	400
Graham, Thos. P	50
Gillett, R. W	300
Gould, Ottis T	100
Geer, F	500
Hawley, F. A. & Co	60
Head, Chas. & Co	200
Head & Perkins & ag'ts	4,411
Howe, John B	250
Hazeltine, J. E	100
Hodgson, Jona	500
Houston, D. & Co	800
Haskell, W. A	50
Haskell, W. J	200
Hannahs, Geo	500
Heap, Hargreaves	400
Kimball, John F	200
“ Chas. R	20
Knight, W. W	20
Lee Higginson & Co	165
Long, H. V	400
Leonard, S. S	125
“ S. H	50
Lapham, Luther	200
Mussey E. W. & ag't	2,000
Mason and Smith	2,550
Mowry, D. A	300
Munson, John T	50
McIntyre, Mrs. J. C	100
Melenay, Geo. B	125
Marvin, E. H	25
Millett, S. S	350
Parker & Stackpole	150
Peters & Parkison	200
Pierce, N. W	240
Peters, Norris	100
Putnam, Addison	500
Putnam, Frank P	100
Peabody, Geo	30
Pew, W. A	100
Page, Luke J	175
Parker, J. M. G	50
“ Eliot	10
Pearmain & Brooks	250
Remick, C. H., ag't	50

Richards, Hill & Co	175
Ripley, C. T	50
Richards, R. H	380
Read, Jas. H	550
Richardson, Geo. F	250
“ D. S	460
“ D. S. & G. F	3,000
“ Geo. R	10
“ Elizabeth C	50
Robinson, Christopher	50
Rust, W. A	75
58 Smalley, Geo. D	10
Smalley, N. F	10
“ Jas. A	100
Shepard, Wm	300
Spaulding, Maria A	150
“ E. F	20
Spencer, H. F	270
Smith, Webster	300
Spencer, A. W	100
Shute, Walter	10
Streeter, A. T	100
Taylor, Jas. K	100
Tucke, E. M	200
Thompson, J. N	100
Taylor, Hilliard	10
Vinton, W. F	10
Watson, J. C	250
Wetherbee, J. O	600
Waitt, J. Porter	100
Walker, Samuel	20
Wheeler, Chas. H	50
Wood, H. S	10
Wile, Julius M	20
“ Isaac	100
Ward, C. H., agent	50
Total	34,264

The minutes of the last meeting were approved. The directors then submitted their annual report to the meeting. Mr. A. S. Bigelow moved that the report be accepted and filed, which motion was duly seconded. Mr. W. Hart Smith then moved the following as an amendment to the motion of Mr. Bigelow:

“Whereas the charter of the Pewabic Mining Co. expired by limitation in April, 1883, and the statutes of Michigan provide that corporations whose charters expire by limitation shall nevertheless continue to be bodies corporate for the term of three years after the time when they would have been so dissolved for the purpose of prosecuting and defending suits by or against them and of enabling them gradually to settle and close their concern, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which such corporations have been or may be established: and whereas, by the report of the directors of said company of date January 1, 1884, it appears that the foregoing provisions of said statutes have not been followed, that assessments have been called and the money thereby obtained expended in active mining operations, to the loss and detriment of the stockholders of said company: Therefore—

59 Resolved, That the said report be, and is hereby, rejected, and that the acts of said directors as set forth in said report be, and are hereby, wholly disallowed by the stockholders of said Pewabic Mining Company."

Which motion was seconded by Mr. Mussey. Mr. Smith demanded a stock vote on his motion.

On motion of J. H. Chandler, seconded by S. L. Smith, the president of the meeting was authorized to appoint three tellers to receive and canvass the votes and to report to the meeting. The president then appointed as such tellers S. L. Smith, J. P. Brewster, and C. H. Remick, and they proceeded to receive and collect the ballots on the motion of Mr. W. Hart Smith.

The tellers then reported to the meeting as the result of the ballot thereon as follows: Whole number of votes cast, 33,493, of which there were in the affirmative 6,779, and in the negative there were 26,714.

Thereupon the president declared that the motion of said W. Hart Smith to amend said motion of A. S. Bigelow was lost.

Thereupon the motion of Mr. A. S. Bigelow was voted upon by a *viva voce* vote, and, no person voting in the negative and no stock vote being demanded, the president declared that said motion was carried unanimously.

Mr. J. H. Chandler then offered the following resolutions and moved their adoption, which motion was duly seconded:

"Whereas the charter of this corporation has expired by limitation since the last annual meeting of the stockholders; and

Whereas it is necessary under the laws of the State of Michigan to settle and close up the business of the corporation, and for that purpose all of the property of the corporation must be sold:

Therefore, be it resolved by the stockholders of the Pewabic Mining Company:

1st. That the board of directors of this company be, and they are hereby, authorized to sell and dispose of the real estate, franchises, personal property, assets, and all property of every kind whatsoever belonging to the company for the purposes aforesaid for a
60 sum not less than fifty thousand dollars.

2nd. That the president and secretary of the company be, and they are hereby, authorized to execute and deliver all conveyances necessary to carry out any contracts for the sale of the property aforesaid made by the board of directors, and that the board of directors are hereby authorized to close up the business of this company."

Thereupon Mr. W. Hart Smith moved the following resolutions as an amendment to or substitute for the resolutions of Mr. Chandler:

"Resolved, That the board of directors of the Pewabic Mining Co. be, and hereby are, authorized to sell and dispose of, for cash only, at public or private sale, all the real and personal property of said company, for the best price that can be obtained therefor: Provided, however, that before any sale of said real and personal property is made by said board of directors, notice that said real and personal property will be sold for cash and for the highest price offered therefor shall be given to each stockholder of said company, in the same manner as the statutes of Michigan provide that notice of special meetings of stockholders in mining corporations shall be given: And provided also, that in case said board of directors shall determine to sell said real and personal property at public auction, notice of the time and place of such sale shall be given to each stockholder of said company, in the same manner as the notice above mentioned is required to be given.

"Resolved, That the said board of directors be, and hereby are, directed, out of the proceeds of the sale of said real and personal property (the expenses incidental thereto being first deducted), to first pay the indebtedness of said company, and then to distribute the remainder of such proceeds among the stockholders of said company *pro rata*."

Which motion was seconded, and Mr. W. Hart Smith demanded a stock vote thereon, which was ordered.

61 Thereupon the tellers proceeded to receive and count the ballots on said amendment, and reported to the meeting as follows:

Whole number of votes cast	31,174
Of which there were in the affirmative	6,774
And of which there were in the negative	24,403

Thereupon the president declared that the amendment or substitute moved by said W. Hart Smith had been lost.

Thereupon the meeting proceeded to vote upon the resolutions offered by Mr. Chandler, hereinbefore set forth, by a *viva voce* vote, no person demanding a stock vote; and there were 27,450 votes in favor of the adoption of said resolutions, and none against *it*.

The president then declared that said resolutions had been adopted by the meeting by a unanimous vote.

Thereupon Mr. J. H. Chandler offered the following resolution, and moved its adoption:

"Resolved, That it is the sense of this meeting of stockholders that the property of this company should be sold to a new corporation, organized, under the laws of Michigan, on the basis of forty thousand shares (40,000), and that the stock of such new corporation should be issued to and received by the stockholders of this company in payment for the same, and that the board of directors should give the stockholders of this company of record on April 12, 1884, the right to receive shares of stock of said new company equal to the number of shares owned by them, respectively, in this company, if they so elect, upon surrendering their certificates of stock in this company within thirty days from April 12, 1884.

"Any stockholder declining to receive said new stock within said thirty days to receive his *pro rata* of the purchase price and assets in money."

Which motion was duly seconded.

Mr. W. Hart Smith then moved, as an amendment or substitute therefor, the same resolutions, which are hereinbefore set forth, offered by him to the first resolutions of Mr. Chandler; which motion was duly seconded, and said Smith demanded a stock vote thereon.

Thereupon the tellers proceeded to receive and count the votes, and reported to the meeting as follows:

Whole number of votes cast	35,168
Of which there were in the affirmative	6,754
And there were in the negative	28,414

62 Thereupon the president declared that said amendment or substitute of said W. Hart Smith was lost.

Mr. W. Hart Smith then presented a protest in writing, which was filed.

Thereupon the meeting proceeded to vote upon the resolution offered by said Chandler, and, a stock vote having been demanded, the tellers proceeded to receive and count the ballots and reported to the meeting as follows:

Whole number of votes cast	34,673
Of which there were in the affirmative	27,919
And there were in the negative	6,754

The president then announced that said resolution had been adopted. Thereupon, upon motion, the meeting proceeded to vote for a board of five directors for the ensuing year. The tellers proceeded to receive and count the ballots and reported to the meeting as follows:

Whole number of votes cast, 26,464, and the following-named persons having received 26,464 votes each they were declared by the president duly elected as directors of the company for the ensuing year:

Henry Billings, of Newton, Mass.
Alden D. Butterick, of Lowell, Mass.
Thos. H. Perkins, " Boston, "
Daniel L. Demmon, " " "
Johnson Vivian, " Michigan.

Thereupon the meeting adjourned *sine die*.

D. L. DEMMON,
Secretary Pewabic Mining Co.

COMMONWEALTH OF MASSACHUSETTS, } *ss:*
County of Suffolk, City of Boston, }

On this thirty-first day of March, A. D. 1884, before me,
63 William Breck, a notary public duly commissioned and

qualified for the county aforesaid, personally appeared D. L. Demmon, sec'y Pewabic Mining Co., who, being duly sworn, declared that the above and annexed statement by him subscribed is a true copy of record of the annual meeting of Pewabic Mining Co. held at Boston, Mass., March 26, 1884.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed my seal of office the day and year above written.

WILLIAM BRECK,
Notary Public.

COMMONWEALTH OF MASSACHUSETTS, } *ss:*
Suffolk, }

CLERK'S OFFICE OF SUPERIOR COURT.

I, Joseph A. Willard, clerk of the superior court for said county, the same being a court of record, do hereby certify that William Breck, whose name is subscribed to the proof or acknowledgment of the annexed instrument in writing, was at the time of taking such proof or acknowledgment a notary public in and for said county, duly commissioned, sworn, and authorized to take the same; and, further, that I am well acquainted with his handwriting and verily believe that the signature to the said proof or acknowledgment is genuine; and, further, that the annexed instrument is executed and acknowledged according to the laws of said Commonwealth.

Witness my hand and the seal of said court, at Boston, in said county and Commonwealth, this 31st day of March, A. D. eighteen — eighty-four.

[SEAL.] JOS. A. WILLARD, *Clerk.*

64 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, W. HART SMITH, and SULLIVAN BALLOU
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, ALDEN B. BUTTERICK, DANIEL L. DEMMON, and THE PEWABIC COPPER COMPANY.

WESTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION, } *ss:*
County of Houghton, }

John Daniells, being duly sworn, deposes and says that he resides in the township of Calumet, in said county and State; that he has been engaged in mining for the last 31 years; that he has had charge and direction of mining work for the past 23 years; that he is now and has been for five years last past superintendent of the Osceola Consolidated Mining Company, for about two years of the Tamarack Mining Company, and for about four years of the Ahmeek Mining Company; that he has examined the Pewabic mine under ground three times, the first time being about the time of the purchase of the property from Thomas W. Edwards in 1879, the second time 18 months ago, and the last time on this 4th day of April, 1884; that he has made a thorough and careful examination of the mine under ground, and he unhesitatingly says that the operations of said mine have been conducted in a good and miner-like manner, and that, in his judgment, due economy, consistent with the thorough exploration of the mine, has been exercised, and nothing neglected that could conduce to the interests of the company. Deponent further says that the present outlook of the mine is better than it was on the occasion of the second examination made by him.

JOHN DANIELL.

Subscribed and sworn to before me this fourth day of April, A. D. 1884.

ALLEN F. RESS,
[SEAL.] *Notary Public, Houghton Co., Michigan.*

65 COMMONWEALTH OF MASSACHUSETTS,
SECRETARY'S DEPARTMENT,
BOSTON, *April* 14, 1884.

I hereby certify that on the 27th day of December, 1878, Edward J. Jones was appointed and commissioned and on the 31st day of December, 1878, duly received the qualifying oaths thereunder as a notary public for the county of Suffolk, in the said Commonwealth, for the term of seven years from the date of said commission, and that to his acts and attestations as such full faith and credit are and ought to be given in and out of court.

In testimony of which I have hereunto affixed the seal of the Commonwealth.

HENRY B. PIERCE,
[SEAL.] *Secretary of the Commonwealth.*

Edward J. Jones, notary public and commissioner for all the States and Territories and the British Provinces of Ontario and Nova Scotia, 16 Pemberton Sq., Boston, Mass.

UNITED STATES OF AMERICA.

COMMONWEALTH OF MASSACHUSETTS, } ss:
County of Suffolk, City of Boston, }

Be it remembered and I hereby certify that on the (14th) fourteenth day of April, in the year of our Lord one thousand eight hundred and eighty-four, before me, Edward J. Jones, a notary public for said county of Suffolk, residing and practising in said city, county, and Commonwealth, duly appointed, commis-
66 sioned, and authorized by his excellency the governor of the Commonwealth of Massachusetts to declare, enter, and record protests, to administer oaths and affirmations, &c., and to take acknowledgment and proof of the execution of deeds and other instruments in writing, under seal, to be used in the several courts or recorded in said Commonwealth of Massachusetts or elsewhere, per-

sonally appeared at my office, at said Boston, Thomas H. Perkins and Henry Billings, both of said Boston, and severally personally known to me to be the same individuals who made the annexed affidavit marked A A, who, being first duly sworn by me, did severally solemnly depose and say that the matters and things set forth in the annexed affidavit by them subscribed in my presence are true of their own personal knowledge, information, and belief; and I further certify that I carefully read over and explained to said deponents the full meaning and effect of their said affidavit, and they severally acknowledged and declared their full and complete understanding of all the matters and things contained in said affidavit, and upon their said oath declared they are all true in every particular as therein named.

In witness whereof I have hereunto set my hand and affixed my notarial seal, at my office, in the city of Boston, county and Commonwealth aforesaid, on the fourteenth day of April, in the year of our Lord eighteen hundred and eighty-four.

EDWARD J. JONES,
[SEAL.] *Notary Public for Suffolk County.*

A A.

STATE OF MASSACHUSETTS, }
County of Suffolk, City of Boston, } *ss:*

On this 14th day of April, A. D. 1884, personally appeared Thomas H. Perkins and Henry Billings, two of the above-named defendants, who, being by me duly sworn, depose and say 67 that they have read the foregoing answer by them subscribed and know the contents thereof, and that the statements therein contained are true of their own knowledge except as to those matters which are therein stated to be on information and belief, and as to those matters they believe it to be true.

THOS. H. PERKINS.
HENRY BILLINGS.

Before me—

EDWARD J. JONES,
[SEAL.] *Notary Public for said County of Suffolk.*

UNITED STATES OF AMERICA.

COMMONWEALTH OF MASSACHUSETTS, }
County of Suffolk, City of Boston, } *ss:*

Be it remembered and I hereby certify that on the (14th) fourteenth day of April, in the year of our Lord one thousand eight hundred and eighty-four, before me, Edward J. Jones, a notary public for said county of Suffolk, residing and practicing in said city, county, and Commonwealth, duly appointed, commissioned, and authorized by his excellency the governor of the Commonwealth of Massachusetts to declare, enter, and record protests, to administer oaths and affirmations, &c, and to take acknowledg-

ment and proof of the execution of deeds and other instruments in
writing, under seal, to be used in the several courts or recorded in
said Commonwealth of Massachusetts or elsewhere, personally ap-
peared at my office, at said Boston, Daniel L. Demmon, of said
Boston, personally known to me to be the same individual who
makes the annexed affidavit marked B B, who, being first duly
sworn by me, did solemnly depose, declare, and say that the mat-
ters and things set forth in the annexed affidavit by him subscribed
in my presence are true of his own personal knowledge, informa-
tion, and belief; and I further certify that I carefully read over
and explained to said deponent the full meaning and effect
68 of his said affidavit, and he acknowledged and declared his
full and complete understanding of all the matters and
things contained in said affidavit, and upon his said oath declared
they are all true in every particular as therein named.

In witness whereof I have hereunto set my hand and affixed my notarial seal, at my office, in the city of Boston, county and Commonwealth aforesaid, on the fourteenth day of April, in the year of our Lord one thousand eight hundred and eighty-four.

EDWARD J. JONES,
[SEAL.] *Notary Public for Suffolk County.*

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, W. HART SMITH, & SULLIVAN BALLOU
vs.
THE PEWABIC MINING CO., JOHNSON VIVIAN, HENRY BILLINGS, Alden B. Butterick, Daniel L. Demmon, & The Pewabic Copper Co.

B B.

STATE OF MASSACHUSETTS,
County of Suffolk, City of Boston, } *ss:*

Daniel L. Demmon, being duly sworn, deposes and says that he is one of the above-named defendants; that Alden B. Butterick, also one of the above-named defendants, resides in the city of Boston, in said county and State; that said Butterick left his home on the 27th day of March last for a tour in some of the Southern States and has not yet returned; that there has been no opportunity to communicate with said Butterick in regard to said suit since the commencement thereof.

DANIEL L. DEMMON.

Before me—

EDWARD J. JONES,
[SEAL.] *Notary Public for said County of Suffolk.*

Endorsed: Mason *et al.* *v.* Pewabic *et al.* Filed Ap'l 22d, 1884. H. M. Hinsdill, clerk.

69 UNITED STATES OF AMERICA:

May Term, A. D. 1886.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, northern division, begun and held at the United States court-rooms, in the city of Marquette, in said district, on Tuesday, the 6th day of July, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh.

Present: The Hon. Geo. R. Sage, district judge.

THOMAS H. MASON, W. HART SMITH, and SULLIVAN BALLOU,
Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY Billings, Thomas H. Perkins, Alden B Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

On motion of Hon. C. B. Grant, of counsel for defendants, ordered that the following decree, heretofore rendered, be entered of record:

At a session of said court held in the circuit on the fourth day of May, A. D. 1886.

Present: The Honorable Stanley Matthews, associate justice of the Supreme Court of the United States, holding the circuit court.

This cause coming on for argument on the pleadings and proofs, after hearing Don M. Dickinson and Alfred Russell, of counsel for the complainants, and C. B. Grant and Benton Hanchett, of counsel for the defendants, and after due consideration, it is ordered, adjudged, and decreed that the equity of the cause is with the complainants; that the affairs of the Pewabic Mining Company be, and they are hereby, decreed to be wound up.

That all the assets and property of the said Pewabic Mining Company be sold at public vendue, for cash, to the highest bidder: Provided, however, that if at such sale the bid for the aggregate of the property and assets of said company should not be in excess of fifty thousand dollars above the amount of the debts of said company existing at the time of the sale hereinafter decreed, then that the arrangement for the sale of the property of said company made at the stockholders' meeting in Boston on the 26th day of March, A. D. 1884, and as set up in the defendants' answer, shall be carried out under the directions of the special master hereinafter designated, as provided by the resolution adopted by the stockholders of said company at said meeting, and that in such case said master, from the fund to be furnished by the defendants, shall first pay the debts of said Pewabic Mining Company, and, second, shall pay their *pro rata* to such stockholders who shall elect to take their share in cash of fifty thousand dollars: Provided, that such stockholders shall make such election and present their stock for cancellation within sixty days from the date of holding the public sale: And provided further, that said special master shall, in case said stockholders' arrangements of March 26, 1884, shall be carried out as herein provided, execute all necessary formal conveyances necessary to carry out said arrangements on payment into his hands by defendants of sufficient money to pay said debts and the *pro rata* to all stockholders as aforesaid, or on payment by them of all the debts and of such stock as shall be presented for cancellation and payment as aforesaid within sixty days, with funds furnished by defendants as —.

It is further ordered, adjudged, and decreed that this cause be, and the same is hereby, referred to Peter White, as special master, for the following purposes and with the following powers, to 70 wit: That said master proceed to ascertain the assets and property and the amount of the debts of said Pewabic Mining Company, and that to this end he may consider the evidence already taken in the cause and may further, upon notice to the solicitors of the respective parties, set days for hearing for those purposes, and either party may produce witnesses as in the ordinary course of a master's proceedings, and that he report to this court his proceedings and findings therein.

That for the purposes hereinabove specified said master is hereby invested with the power and authority to take and examine all the books of said company and to freely examine all its assets, both real and personal; to enter into and upon the mine and all other property and assets of said Pewabic Mining Company at any and all times as he may desire and to do those things which in his judgment may be necessary and proper to put all of said property in a condition and situation to sell to the best advantage.

And it is expressly provided that any proposed purchaser or proposed bidder shall be permitted to enter freely into and upon said mine and all other property and to fully inspect the same and said assets.

That after ascertaining the assets and debts of said company and making a report thereof to this court, as hereinabove provided, said master shall proceed to sell said property at public vendue to the highest bidder in one body after giving the notices of said sale required by law and the practice of this court, and that he make report thereof, and that said property be offered for sale at the front door of the court-house in the village of Houghton, in the county of Houghton and State of Michigan.

It is further ordered, adjudged, and decreed that if the highest bid for said property at such sale shall amount to more than fifty thousand dollars over and above the indebtedness of said Pewabic Mining Company, as hereinabove provided, then that the arrangements for the sale of said property made at said meeting of the stockholders of said company in Boston be set aside and held to be null and void, and that the said Pewabic Mining Company and the other defendants in this cause other than the Pewabic Copper Company be, and they are hereby, perpetually enjoined from selling and disposing of the assets and property of said Pewabic Mining Company to said defendants The Pewabic Copper Company or any other person, and that the said Pewabic Copper Company be perpetually enjoined from receiving any such conveyance or transfer, and that any transfer made by the said Pewabic Mining Company to said Pewabic Copper Company be, and the same is hereby, declared to be void.

It is further ordered, adjudged, and decreed that the defendants Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Butterick, and Daniel L. Demmon, directors of said Pewabic Mining Company, are not liable to pay to complainants and other stockholders any money received by them since the expiration of the charter of said Pewabic Mining Company, April 4, 1883, either for money received or expended by them in carrying on the business of said Pewabic Mining Company or otherwise after the expiration of said charter, and that an accounting by the said defendant directors be, and the same is hereby, denied as to such expenditures made by them after the expiration of the charter.

It is further ordered, adjudged, and decreed that the said master, in case of the sale as hereinbefore provided, is invested with full power to make all necessary formal transfers and conveyances.

It is further ordered, adjudged, and decreed that the proceeds of sales in liquidation of the affairs of said Pewabic Mining Company, in case of sale as above provided, be applied to the payment of the debts of the said Pewabic Mining Company and the surplus thereafter be distributed *pro rata* among the stockholders of said Pewabic Mining Company.

It is further ordered, adjudged, and decreed that the complainants recover their costs, to be taxed as against the defendants The Pewabic Copper Company and The Pewabic Mining Company, 71 and that the other defendants recover their costs, to be taxed against said complainants, all said costs to be first paid out of the fund realized at the sale, or, in the alternative case hereinbefore provided, then out of the fund before the payment of the *pro rata* to any stockholder.

(Signed) STANLEY MATTHEWS,
Associate Justice.

72 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the western district of Michigan, Greeting:

Whereas lately, in the circuit court of the United States for the western district of Michigan, before you or some of you, in a cause between Thomas H. Mason, William Hart Smith, and Sullivan Ballou, complainants, and The Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, defendants, wherein the decree of the said circuit court, entered in said cause, is in the following words, viz:

"At a session of said court, held in the — circuit on the 4th day of May, A. D. 1886.

Present: The Honorable Stanley Matthews, associate justice of the Supreme Court of the United States, holding the circuit court.

This cause coming on for argument on the pleadings and proofs, after hearing Don M. Dickinson and Alfred Russell, of counsel for the complainants, and C. B. Grant and Benton Hanchett, of counsel for the defendants, and after due consideration, it is ordered, adjudged, and decreed that the equity of the cause is with the complainants; that the affairs of the Pewabic Mining Company be, and they are hereby, decreed to be wound up.

That all the assets and property of the said Pewabic Mining Company be sold at public vendue for cash to the highest bidder: 73 Provided, however, that if at such — the bid for the aggregate of the property and assets of said company should not be in excess of fifty thousand dollars above the amount of the debts of said company existing at the time of the sale hereinafter decreed, then that the arrangement for the sale of the property of said company, made at the stockholders' meeting in Boston on the 26th day of March, A. D. 1884, and as set up in the defendants' answer, shall be carried out under the direction of the special master hereinafter designated, as provided by the resolution adopted by the stockholders of said company at said meeting, and that in such case said master, from the fund to be furnished by the defendants, shall first pay the debts of said Pewabic Mining Company, and, second, shall pay their *pro rata* to such stockholders who shall elect to take their share in cash of fifty thousand dollars: Provided, that such stockholders shall make such election and present their stock for cancellation within sixty days from the date of holding the public sale: And provided further, that said special master shall, in case said stockholders' arrangements of March 26, 1884, shall be carried out as herein provided, execute all necessary formal conveyances necessary to carry out said arrangements on payment into his hands by defendants of sufficient money to pay said debts and the *pro rata* to all stockholders as aforesaid or on payment by them of all the debts and of such stock as shall be presented for cancellation and payment as aforesaid within sixty days with funds furnished by defendants as aforesaid.

It is further ordered, adjudged, and decreed that this cause be, and is hereby, referred to Peter White as special master for the following purposes and with the following powers, to wit: That said master proceed to ascertain the assets and property and the amount of the debts of said Pewabic Mining Company, and that to this end he may consider the evidence already taken in the cause and 74 may further, upon notice to the solicitors of the respective parties, set days for hearing for those purposes, and either party may produce witnesses as in the ordinary course of a master's proceedings, and that he report to this court his proceedings and findings thereon.

That for the purposes hereinabove specified said master is hereby invested with the power and authority to take and examine all the books of the said company, and to freely examine all its assets, both real and personal; to enter in and upon the mine and all other property and assets of said Pewabic Mining Company at any and all times as he may desire, and to do those things which, in his judgment, may be necessary and proper to put all of said property in the condition and situation to sell to the best advantage.

And it is expressly provided that any proposed purchaser or proposed bidder shall be permitted to enter freely in and upon said mine and all other property and to fully inspect the same and said assets.

That after ascertaining the assets and debts of said company and making a report thereof to this court, as hereinabove provided, said master shall proceed to sell said property at public vendue to the highest bidder, in one body, after giving the notices of said sale required by law and the practice of this court, and that he make report thereof, and that said property be offered for sale at the front door of the court-house in the village of Houghton, in the county of Houghton and State of Michigan.

It is further ordered, adjudged, and decreed that if the highest bid for said property at such sale shall amount to more than fifty thousand dollars over and above the indebtedness of said Pewabic Mining Company, as hereinabove provided, then that the arrangement for the sale of said property made at said meeting of the stockholders of said company in Boston be set aside and held to be null and void, and that the said Pewabic Mining Company and the
75 other defendants in this cause other than the Pewabic Copper Company be, and they are hereby, perpetually enjoined from selling or disposing of the assets and property of said Pewabic Mining Company to said defendants, The Pewabic Copper Company, or any other person, and that the said Pewabic Copper Company be perpetually enjoined from receiving any such conveyance or transfer, and that any transfer made by the said Pewabic Mining Company to said Pewabic Copper Company be, and the same is hereby, declared to be void.

It is further ordered, adjudged, and decreed that the defendants Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Butterick, and Daniel L. Demmon, directors of said Pewabic Mining Company, are not liable to pay to complainants and other stockholders any money received by them since the expiration of the charter of said Pewabic Mining Company, April 4th, 1883, either for money received or expended by them in carrying on the business of said Pewabic Mining Company or otherwise after the expiration of said charter, and that an accounting by the said defendant directors be, and the same is hereby, denied as to such expenditures made by them after the expiration of the charter.

It is further ordered, adjudged, and decreed that the said master, in case of the sale as hereinbefore provided, is invested with full power to make all necessary formal transfers and conveyances.

It is further ordered, adjudged, and decreed that the proceeds of sales in liquidation of the affairs of said Pewabic Mining Company, in case of sale as above provided, be applied to the payment of the debts of the said Pewabic Mining Company, and the surplus thereafter be distributed *pro rata* among the stockholders of said Pewabic Mining Company.

It is further ordered, adjudged, and decreed that the complainants recover their costs, to be taxed as against the defendants The Pewabic Copper Company and The Pewabic Mining Company, 76 and that the other defendants recover their costs, to be taxed against said complainants, all said costs to be first paid out of the fund realized at the sale, or in the alternative case hereinbefore provided, then out of the fund before the payment of the *pro rata* to any stockholder."

As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by the said complainants, and also an appeal taken by said defendants, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and eighty-nine, the said cause came on to be heard before the said Supreme Court on the said transcript of record on appeal and cross-appeal, and was argued by counsel:

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause, so far as the same adjudges that the defendant directors of the Pewabic Mining Company are not liable to pay to complainants and other stockholders any money received by them since the expiration of the charter of the Pewabic Mining Company, April 4, 1883, either for money received or expended by them in carrying on the business of said Pewabic Mining Company or otherwise after the expiration of said charter, and so far as the same denies an accounting by the said defendant directors as to such expenditures made by them after the expiration of the charter, be, and the same is hereby, reversed. In all other respects the decree is affirmed, the costs in this court to be paid by the defendants in the court below; and that the said complainants, Thomas H. Mason *et al.*, recover against the said defendants one thousand one hundred and thirty dollars and twenty-five cents for their costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same 77 is hereby, remanded to the said circuit court with directions to enforce its decree as to the sale of the property, to appoint a master to take an accounting, and to enquire and report as to the action of the directors after the expiration of the charter, and to take such further proceedings as shall not be inconsistent with the opinion of this court.

JANUARY 13, 1890.

You therefore are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeals notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of said Supreme Court, the sixth day of February, in the year of our Lord one thousand eight hundred and ninety.

Costs of Complainants.

Clerk	$367 50
½ cost of printing record	762 75
Attorney	$1,130 25

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Supreme Court of the United States, October Term, 1889.

Costs of Thomas H. Mason et al. in No. 168.

1886. Docketing cause and filing record, $5.00; Oct. term, appearances, .25; filing præcipe, .25; filing papers, .25; continuance, .25	$6 00
1887. Oct. term, transfer, $1.00; filing papers, .25; continuance, .25	1 50
1888. Oct. term, transfer, $1.00; filing papers, .50; continuance, .25	1 75
1889. Oct. term, transfer, $1.00; appearance, .25; filing præcipe and receipts, $1.00; filing papers, $2.50; filing briefs, $5.00; argument, .20; judgment, $1.00; filing same, .25; recording proceedings, .40; mandate, $5.00; ½ charge for preparing record for printer, &c., $341.25; costs and copy, .40; ½ cost printing record, $762.75	1,121 00
	$1,130 25

Fee Book A. C., page 68.

Test: JAMES H. McKENNEY,
C. S. C. U. S.

78 (Endorsed:) No. 46. Supreme court of the United States. Nos. 168–240. October term, 1889. Mason *et al. vs.* The Pewabic Mining Co. *et al.*, and The Pewabic Mining Co. *et al. vs.* Mason *et al.* Mandate. The circuit court of the United States for the western district of Michigan, northern division. Filed March 14, 1890. C. L. Fitch, clerk.

79 At a session of the circuit court of the United States for the western district of Michigan, northern division, sitting in equity, held at the court-room, in the city of Marquette, on Tuesday, the sixth day of May, in the year of our Lord one thousand eight hundred and ninety.

Present: The Honorable Henry F. Severens, district judge.

In the cause between—

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY Billings, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

On reading and filing the mandate of the Supreme Court of the United States, dated the 6th day of February, in the year of our Lord one thousand eight hundred and ninety, issued after hearing in said court on the transcript of record in this cause on appeal and cross-appeal, by which mandate it appears that the Supreme Court has ordered, adjudged, and decreed as follows, to wit:

"That the decree of the said circuit court in this cause, so far as the same adjudges that the defendant directors of the Pewabic Mining Company are not liable to pay to complainants and other stockholders any money received by them since the expiration of the charter of the Pewabic Mining Company, April 4, 1883, either for money received or expended by them in carrying on the business of said Pewabic Mining Company or otherwise after the expiration of said charter, and so far as the same denies an accounting by the said defendant directors as to such expenditures made by them after the expiration of the charter, be, and the same is hereby, reversed. In all other respects the decree is affirmed, the costs of this court to be paid by the defendants in the court
80 below, and that the said complainants, Thomas H. Mason and others, recover against the said defendants one thousand one hundred and thirty dollars and twenty-five cents for their costs herein expended and have execution therefor; and it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court, with directions to enforce its decree as to the sale of the property, to appoint a master to take an accounting, and to inquire and report as to the action of the directors after the expiration of the charter, and to take such further proceedings as shall not be inconsistent with the opinion of this court. You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeals notwithstanding."

And, on motion of Don M. Dickinson and Alfred Russell, of counsel for the complainants, after notice to the counsel for the defendants, who have been duly heard, and upon mature consideration of the opinion, mandate, and decree of the said Supreme Court—

It is ordered, adjudged, and decreed as follows, to wit:

1. That the equity of the cause is with the complainants, and that the affairs of the Pewabic Mining Company be, and they are hereby, decreed to be wound up.

2. That all the assets and property of the said Pewabic Mining

Company be sold, at public vendue, for cash, to the highest bidder; provided, however, that if at such sale the bid for the aggregate of the property and assets of said company should not be in excess of fifty thousand dollars above the amount of the debts of said company existing at the time of the sale hereinafter decreed, then that the arrangement for the sale of the property of said company made at
the stockholders' meeting in Boston on the 26th day of March, A.
81 D. 1884, and as set up in defendants' answer shall be carried out
under the direction of the special master hereinafter designated,
as provided by the resolution adopted by the stockholders of said company at said meeting, and that in such case said master, from the fund to be furnished by the defendants, shall first pay the debts of said Pewabic Mining Company, and, second, shall pay their *pro rata* to such stockholders who shall elect to take their share in cash of fifty thousand dollars; provided that such stockholders shall make such election and present their stock for cancellation within sixty day from the date of holding the public sale; and provided further that said special master shall, in case said stockholders' arrangement of March 26, 1884, shall be carried out as herein provided, execute all necessary formal conveyances necessary to carry out said arrangements on payment into his hands by defendants of sufficient money to pay said debts and the *pro rata* to all stockholders as aforesaid or on payment by them of all the debts and of such stock as shall be presented for cancellation and payment as aforesaid within sixty days with funds furnished by defendants as aforesaid.

3. It is further ordered, adjudged, and decreed that this cause be, *as* — is hereby, referred to Peter White, as special master, for the purposes of the sale hereinbefore ordered and with the powers hereinafter stated; that said master proceed to ascertain the assets and property and the amount of the debts of said Pewabic Mining Company, and that to this end he may consider the evidence already taken in the cause, and may further, upon notice to the solicitors of the respective parties, set days for hearing for those purposes, and either party may produce witnesses as in the ordinary course of a master's proceedings, he to report to this court his proceedings
and findings thereon.

82 That said master is hereby invested with the power and
authority to take and examine all the books of the said company and to freely examine all its assets, both real and personal; to enter into and upon the mine and all other property and assets of said Pewabic Mining Company at any and all times as he may desire, and to do those things which in his judgment may be necessary and proper to put all of said property in the condition and situation to sell to the best advantage.

And it is expressly provided that any proposed purchaser or proposed bidder shall be permitted to enter freely into and upon said mine and all other property and to fully inspect the same and said assets.

That after ascertaining the assets and the debts of said company and making a report thereof to this court, as hereinabove provided, and the confirmation thereof, said master shall proceed to sell said property, at public vendue, to the highest bidder, in one body, after giving the notices of said sale required by law and the practice of this court, and that he make report thereof, and that said property be offered for sale at the front door of the court-house, in the village of Houghton, in the county of Houghton, and State of Michigan.

4. It is further ordered, adjudged, and decreed that the said master, in case of the sale, as hereinbefore provided, is invested with full power to make all necessary formal transfers and conveyances.

5. It is further ordered, adjudged, and decreed that the proceeds of sales in liquidation of the affairs of said Pewabic Mining Company, in case of sale, as above provided, be applied to the payment of the debts of the said Pewabic Mining Company, and the surplus thereafter be distributed *pro rata* among the stockholders of said Pewabic Mining Company.

6. It is further ordered, adjudged, and decreed that if the
83 highest bid for said property at such sale shall amount to more
than fifty thousand dollars over and above the indebtedness of the Pewabic Mining Company, as hereinabove provided, then that the arrangement for the sale of said property made at said meeting of the stockholders of said company in Boston be set aside and held to be null and void, and that the said Pewabic Mining Company and the other defendants in this cause other than the Pewabic Copper Company be, and they are hereby perpetually enjoined from selling or disposing of the property and assets of said Pewabic Mining Company to said defendants, The Pewabic Copper Company, or any other person, and that the said Pewabic Copper Company be perpetually enjoined from receiving any such conveyance or transfer, and that any transfer made by the said Pewabic Mining Company to said Pewabic Copper Company be, and the same is hereby, declared to be void.

7. It is further ordered, adjudged, and decreed that the defendants Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Butterick, and Daniel L. Demmon, directors of said Pewabic Mining Company, are liable to account to complainants and other stockholders for any money received by them since the expiration of the charter of said Pewabic Mining Company, April 4th, 1883, either for money received or expended by them in carrying on the business of said Pewabic Mining Company or otherwise after the expiration of said charter, and that an accounting by the said defendant directors be, and the same is hereby, directed as to such receipts and expenditures made by them after the expiration of the charter.

8. It is further ordered, adjudged, and decreed that the said special master be, and he hereby is, appointed to take the accounting hereinbefore ordered touching the matters set forth in paragraph 7 of this decree, and that he do forthwith proceed to take such accounting and inquire and report as to the action of the directors after the

expiration of the charter and what money has been received 84 by them or expended by them in carrying on the business of said Pewabic Mining Company or otherwise after the expiration of said charter and in respect to all receipts and expenditures of every name and nature made by them after the expiration of the charter.

That for the better taking of the said accounts the said defendant directors are required to produce before said master all books, entries, papers, vouchers, bills payable and receivable, ledgers, blotters, journals, books of account and the like and are further required to be examined before said master upon oath, either upon interrogatories or *viva voce* or by each of said modes the said master may direct, and at such time and place as he may direct, and that when said master shall make his report touching the accounting he shall report all the facts and testimony upon which he shall base his finding and shall state an account as between said directors and the complainants and other stockholders and show and report what sum may be due from the directors to the stockholders.

9. And it is further ordered that all equities and further directions, including any claim of the said directors for an excess of proper expenditures over receipts and their remedy therefor, if such excess shall be found, and the question of their costs, are reserved until the coming in of the report, and that such sum as shall finally be found due upon confirmation or modification of the report shall be distributed *pro rata* among the stockholders of said Pewabic Mining Company after the payment of the debts of the said company, if they remain unpaid.

10. It is further ordered, adjudged, and decreed that an execution do issue from this court for the costs upon said appeal in favor of the complainants and against the defendants, to wit, for the sum of one thousand one hundred and thirty dollars and twenty-five cents and also for the costs of the complainants in this court, to be taxed against the defendants The Pewabic Mining Company and The Pewabic Copper Company.

11. And it is further ordered that all the parties in this 85 suit are at liberty to apply to the court upon the footing of this decree as occasion may require.

(Endorsed:) 46. Decree. Approved for entry. H. F. Severens, dist. judge. Filed May 6th, 1890. F. M. Moore, dep. clerk.

86 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

To the court:

In pursuance and by virtue of the decretal order of this court made in the above-entitled cause, bearing date 4th day of May, 1886 (1890?), by which it was, among other things, ordered, adjudged, and decreed that all and singular the assets and property of the said Pewabic Mining Company be sold at public vendue for cash to the highest bidder, in one body, after giving the notice of said sale required by law and the practice of this court, and that said property be offered for sale at the front door of the court-house, in the village of Houghton, in the county of Houghton and State of Michigan, by and under my direction, and in pursuance of the order of this court made the 25th day of October, A. D. 1890, and in pursuance of my report, to which reference is hereby had and made, so far as the same was accepted and confirmed by the court in said last-mentioned order, I, the subscriber, Peter White, special master, do respectfully certify and report that, having been charged by the solicitors for the complainants with the execution of said decretal order, I advertised said premises to be sold by me in one body at public auction to the highest bidder at the front door of the court-house, in the village and county of Houghton and State of Michigan (said court-house being the place for holding the circuit court 87 for said county of Houghton and being within the western district of Michigan, northern division), on the 20th day of December, A. D. 1890, at 10 o'clock in the forenoon; that on the said 20th day of December, A. D. 1890, in pursuance of the order of said court made and dated on the 15th day of December, A. D. 1890, wherein it was ordered that I should postpone the sale of said property until Saturday, the 24th day of January, A. D. 1891, at the same hour and place, and that I should publish due notice of said adjournment, I, in accordance with said last-named order, duly postponed said sale to the 24th day of January, A. D. 1891, at the same hour and place, and caused due notice of said adjournment to be published as required by said last-mentioned order; that I caused a notice of such sale so to be held as aforesaid on the 20th day of December, A. D. 1890, to be printed once each week for six successive weeks immediately preceding said 20th day of December, A. D. 1890, in the Portage Lake Mining Gazette, a public newspaper printed in said county of Houghton, as appears in the affidavit following and annexed to this report, marked Exhibit "A," which notice contained a description of said property and assets, and that I caused notice of such adjournment to be published for six weeks immediately preceding the 24th day of January, A. D. 1891, in the said Portage Lake Mining Gazette, as appears in the affidavit following and annexed to this report, marked Exhibit "B;" and I further certify and report that I caused the said notice of sale to be published for six successive weeks prior to the 20th day of December, 1890, and for five successive weekly publications after said twentieth day of December, 1890, with added notice of postponement to the 24th day of January, 1891, in each of the following newspapers, viz., the Evening Post, of New York city; the Free Press, of Detroit, Mich.; the Chicago Times, of Chicago, Ill.; the Boston Post, of Boston, Mass., and the Mining Journal, of Marquette, Mich., so that it might be said that the sale has been widely and fully advertised. I had theretofore 88 advertised the said property for sale in substantially the same form in all of said newspapers for Thursday, the 6th day of November, A. D. 1890, at the same hour and place, for the period of six successive weeks prior to the date last aforesaid, as appears by my report heretofore filed, and had postponed said sale in accordance with said order of this court made October 25th, 1890, until said 20th day of December, 1890; and I do further certify and report that on the said 24th day of January, A. D. 1891, the day on which the said premises were so advertised to be sold as aforesaid, I attended at the time and place fixed for said sale and exposed the said premises for sale at public auction to the highest bidder; that immediately after opening said sale I proceeded to read said notice of sale and notice of adjournment thereto appended; that the terms and conditions of such sale were made known by me to the persons attending such sale previous to putting up said property and assets for sale, and I thereupon announced that no bid offered at such sale would be accepted as final or as closing the sale until ten per cent. thereof had been deposited with me, and if such percentage should not be so deposited that I should ignore such bid and proceed with the sale as if it had not been made, taking the next lowest bid as my starting point; that the balance of any bid over the ten per cent. deposit must be payable on the delivery of the deed. I thereupon held open said sale until the hour of eleven o'clock a. m. of said 24th day of January, A. D. 1891. I further certify and report that at the hour of 11 o'clock a. m. at the place above specified I announced that I was ready to receive bids for the purchase of the assets and property of said Pewabic Mining Company; that all of said assets and property, real and personal, including mining rights of the said Pewabic Mining Company's lands described in the annexed notice as leased, and any land or lands not in said notice described belonging to the said Pewabic Mining Company, and any other property, real, personal, or mixed, and any other assets of 89 said company not especially described in said notice of sale, of every nature, belonging to or appertaining to said company were then offered by me to the highest bidder in one body, and I then and there exposed said property and assets as aforesaid for sale; and the said property and assets were then and there struck off to Thomas Henry Mason and William Hart Smith, composing the firm of Mason and Smith, of the city, county, and State of New

York, for the sum of seven hundred and ten thousand dollars ($710,000), they being the highest bidders therefor and that being the highest sum bid; and I do further certify and report that immediately after such bid was made by said Mason and Smith and received by me a deposit of 10 per cent. on said sum bidden was paid to me by said Mason & Smith, to wit, the sum of seventy-one thousand dollars ($71,000). Thereupon I declared the sale closed and the said property and assets struck off to said Mason & Smith, they being the highest bidders as aforesaid at such sale of the aforesaid property.

I would report that late in the evening of January 23rd (the evening before the sale was to take place) I received the following telegram, to which I paid no attention whatever, deeming it simply frivolous, viz:

Dated BOSTON, MASS., *January* 23, 1891.

"To Peter White, special master:

Please postpone sale of Pewabic mine; just found out the sale on our Jewish Sabbath; never notified of sale until today. We hold nearly three thousand shares. Our Jewish friends in London will buy the mine. There are other Jewish buyers who will not attend sale on Saturday. Will most cheerfully pay all expenses for postponement. If not, please announce at sale, 'We will protest against this legality.'

(Signed) ALFRED A. MARCUS."

And on the 26th day of January—that is, the Monday following the sale—I received at Marquette the following telegraphic message purporting to come from the same person in Boston, and I would add that said person is totally unknown to me, viz:

90 "Dated BOSTON, MASS., *Jan. 26th*, 1891.

To Peter White, special master:

You ignored my dispatch, sold the Pewabic mine. I protest against sale, as you were bound to do all to get the highest price. I claim the right now to bid seven hundred and twenty-one thousand dollars cash, being twenty thousand dollars more than bid at the illegal sale. I shall claim the mine, being the highest bidder, and protest against any transfer being made to any one except myself, and shall hold you personally responsible.

(Signed) ALFRED MARCUS."

I have proofs of publication in all the said newspapers, but do not file them with this report, because it seems to me unnecessary to add to its bulk and the cost of copying, but I can at any time file same with a supplemental report.

All of which is respectfully submitted.

Dated Marquette, Mich., February 3rd, A. D. 1891.

PETER WHITE,
Special Master.

91 *Legal Notice.*

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Chancery.

THOMAS H. MASON, WILLIAM HART SMITH, SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

In pursuance and by virtue of an*d* order and decree of the circuit court of the United States for the western district of Michigan, northern division, in chancery, made and dated on the sixth day of May, A. D. 1890, in a certain cause therein depending, wherein Thomas H. Mason, William Hart Smith, and Sullivan Ballou are complainants and The Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company are defendants—

Notice is hereby given that I shall sell at public auction, to the highest bidder, at the front door of the court-house, in the village and county of Houghton and State of Michigan, said court-house being the place for holding the circuit court for said county of Houghton and being within the western district of Michigan, northern division, on Saturday, the 20th day of December, A. D. 1890, at 10 o'clock in the forenoon, all the following-described real estate, together with all and singular the houses, buildings, stamp-mill, mining plant, engine, machinery, pumps, rolling stock, mining supplies thereon and therein and belonging thereto, and all mining rights connected therewith, including the stamp-mill plant, with its pumps and buildings, the water front of the stamp-mill site on Portage lake or river, eighty-nine dwellings, and mine buildings and shops, and entire mining equipment of the Pewabic Mining Company, said real estate and real interest being as follows, to wit:

92 1. The northwest quarter of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west.

2. The northeast quarter of section twenty-five (25), in t*wo*nship fifty-five north, of range thirty-four (34) west, saving, excepting, and reserving from said northeast quarter, as heretofore reserved in a conveyance to said Pewabic Mining Company by August Coburn and wife, five (5) acres in said section twenty-five (25), which said five (5) acres is in square form, with sides of equal length, on the north and west lines of said quarter section; excepting, also, a lot leased to William Tewk September 1st, 1866, the lease of the same being for twenty-five years, recorded in Liber One of Miscellaneous Records, page 240 of records, in the office of the register of deeds of Houghton county, Michigan, described as follows: Lot No. —, in the subdivision of the northeast quarter of section twenty-five (25),

in township fifty-five (55) north, of range thirty-four (34) west, excepting and reserving, also, from said northeast quarter a tract leased to Isaac Jones July 1st, 1868, the lease of the same being for twenty-five years, recorded in Liber One of Miscellaneous Records, page 487, in the office of the register of deeds of said county, described as follows: The lot in the subdivision of the northeast quarter of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west, the land belonging to the Pewabic Mining Company.

3. Also the southwest quarter of said section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west, saving and excepting from said southwest quarter a certain parcel of land conveyed in a deed by the said Pewabic Mining Company to the Franklin Mining Company, the deed bearing date the 21st day of August, 1864, rec*i*rded in said register's office of said county in Liber 5 of Deeds, on page 43, described as follows: Beginning at a point on the section line between said sections twenty-five (25) and thirty-six (36) 422 feet 8 inches easterly from the northeast
93 corner of lands owned by the Detroit and Lake Superior
Copper Company, thence north nineteen (19) degrees twenty-three (23) minutes east eighty-nine feet 9 inches, thence at right angles southeasterly 50 feet, thence south 19 degrees 23 minutes west 63 feet 8 inches to said line between sections twenty-five (25) and thirty-six (36), and thence west on said line sixty-three (63) feet seven (7) inches to the point of beginning; excepting, also, from said southwest quarter of said section twenty-five (25) a parcel of land conveyed in a deed made by said Pewabic Mining Company to Samuel F. Hodge, the deed bearing date the 1st day of November, 1876, and recorded in said register's office of said county *of* volume 17 of Deeds, at page 51, described as follows: Commencing at a point on the east boundary of John Senter's powder-magazine lot at the point where said line is intersected by the east and west section line between said section twenty-five (25) and thirty-six (36), thence north 19 degrees twenty-three (23) minutes east two hundred and thirty-nine (239) feet, thence due east two hundred and fifty-eight (258) feet, thence at right angles due south to said section line, thence west along said section line to point of beginning, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company and subject to sale at public vendue under this notice and in connection with other property of said company herein described.

Excepting, also, from above said southwest quarter of said section twenty-five (25) a certain parcel of land conveyed by a deed from the said Pewabic Mining Company to the Detroit and Lake Superior Copper Company, the deed bearing date November 15, 1878, and recorded in said register's office of said county, in volume 19 of Deeds, at page 30, described as follows: Beginning at a point three hundred and forty (340) feet north from an iron pin in section line on the south boundary of section twenty-five (25), town. fifty-five
(55) north, of range thirty-four (34) west, that point being
94 four hundred and twenty-four (424) feet east of the south-

west corner of said section twenty-five (25), thence running west twenty (20) feet, thence north nineteen (19) degrees thirty-nine (39) minutes west four hundred and sixty-two (462) feet, thence due east seven hundred and fifteen (715) feet, thence south twenty-seven (27) degrees fifty-two (52) minutes west four hundred and ninety-two (492) feet, thence west twenty (20) feet, thence north eighty-five (85) feet, thence west two hundred and ninety (290) feet, thence south eighty-five (85) feet to place of beginning, containing four and sixty-five one-hundredths (4.65) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company and subject to sale at public vendue under this notice and in connection with other property of said company herein described.

Excepting, also, from said southwest quarter of said section twenty-five (25) a certain parcel of land conveyed by a deed from the said Pewabic Mining Company to Johnson Vivian, the deed bearing date the 28th day of April, 1879, and recorded in said register's office of said county in volume 20 of Deeds, at page 439, described as follows: Commencing at the southwest quarter of said section twenty-five (25), thence north along section line six hundred and sixty and one-tenth (660.1) feet; thence deflecting eighty-nine (89) degrees eight (8) minutes east two hundred and seventy-nine (279) feet seven (7) inches; thence deflecting seventy (70) degrees t*wne*ty-one (21) minutes southeasterly three hundred and thirty-nine and eight tenths (339.8) feet; thence deflecting seventy (70) degrees twenty-one (21) minutes east twenty (20) feet; thence deflecting ninety (90) degrees south three hundred and forty (340) feet; thence deflecting ninety (90) degrees west four hundred and twenty-four (424) feet to place of beginning, containing five and s*ue*enty-eight — (5.78) acres; the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining
Company and subject to sale at public vendue under this
95 notice and in connection with other property of said com-
pany herein described; reserving, also, from said southwest quarter of said section twenty-five (25) a parcel of land leased for ninety-nine years to the Detroit and Lake Superior Copper Company, said lease being of date October 7th, 1869, recorded in Liber One of Miscellaneous Records in the office of the register of deeds of said county, at page 312, described as follows: Commencing at a point on the north boundary of section thirty-six (36), in township fifty-five (55) north, of range thirty-four (34) west, distant four hundred and twenty-four (424) feet east from the northwest corner of said section thirty-six (36); thence running due north four hundred and twenty-five (425) feet to an iron stake; thence east two hundred and ninety (290) feet to an iron stake; thence south three hundred and twenty-five (325) feet to an iron stake; thence east six hundred and forty-one (641) feet to an iron stake; thence south one hundred (100) feet to the north boundary of said section thirty-six (36); thence west along said section line to the point of beginning, containing four and twenty-nine one-hundredths (4.29) acres; the minerals and the right to mine the same being retained by and

reserved to said Pewabic Mining Company and subject to sale at public vendue under this notice and in connection with other property of said company herein described.

Excepting, also, from said southwest quarter of said section twenty-five a tract of land leased to Joseph Hamel for a period of seventy-five years, the lease being of date March 7th, 1870, recorded in Liber One of Miscellaneous Records in the office of the register of deeds of said county, at page 336, described as follows: Commencing at the southwest corner of said section twenty-five (25), thence north along the west boundary eighteen hundred and ninety-one (1,891) feet, thence east nine hundred and sixty-three (963) feet, thence south nineteen (19) degrees east two thousand (2,000) feet, thence west eighty (80) feet, thence north nineteen (19) degrees twenty-three (23) 96 minutes east sixty-eight (68) feet eight (8) inches, thence north seventy (70) degrees thirty-seven (37) minutes west sixty (60) feet, thence south nineteen (19) degrees twenty-three (23) minutes west eighty-nine (89) feet nine (9) inches, thence west one hundred and eleven (111) feet, thence north one hundred (100) feet, thence west six hundred and forty-one (641) feet, thence north three hundred and twenty-five (325) feet, thence west two hundred and ninety (290) feet, thence south four hundred and twenty-five (425) feet, thence west four hundred and twenty-four (424) feet to point of beginning, containing fifty-one and sixty-five one-hundredths (4.65) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company and subject to sale at public vendue under this notice and in connection with other property of said company herein described.

Reserving also from said southwest quarter of said section twenty-five (25) a tract leased to William Hosking for a period of twenty-five years, the lease being of date September 7, 1869, recorded in Liber One of Miscellaneous Records in the office of the register of deeds of said county, at page 450, described as follows: A lot in section twenty-five (25), town. fifty-five (55) north, of range thirty-four (34) west, near wagon road leading to the Pewabic stamp-mill, on which stands a house formerly owned by Thomas Odgers.

Reserving also from said southwest quarter of said section twenty-five (25) a tract leased to John Phillips for a period of twenty years, the lease being of date June 29th, 1872, recorded in Liber One of Miscellaneous Records in the office of the register of deeds of said county, at page 587, described as follows: A lot of land on the right side of the road leading from the stamp-mill to the mine, on which his dwelling-house is situated.

Excepting and reserving also from the west half of said section twenty-five (25) the right of way for the Quincy and Torch 97 Lake railroad, the instrument being of record in volume 29 of Deeds in the office of the register of deeds of said county, at page 315, the instrument being of date May 23, 1889, described as follows: A tract of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line hereinafter described across the following pieces of land, viz: The west half of section twenty-five (25), township fifty-five (55) north, of range thirty-four (34) west, commencing at a point on the west section line of said section twenty-five (25) one hundred and twenty and two-tenths (120.2) feet north of the quarter post, thence south eighty-five (85) degrees twenty-six and one-third (26⅓) minutes east thirteen hundred and twelve and nine-tenths (1,312.9) feet, thence on a two-degree (2) curve to the left two hundred and seventy-eight and five-tenths (278.5) feet, thence north eighty-eight (88) degrees fifty-eight and one-half (58½) minutes east six hundred and forty-three and four-tenths (643.4) —, thence on an eight (8) degree curve to the right three hundred and forty-three and four-tenths (343.4) feet to a point on the north and south center line of said section twenty-five (25) ninety-six (96) feet south of the center post.

4. Also the east five hundred and seventy-six (576) feet of lot one (1), in section thirty-six (36) of township fifty-five (55) north, of range thirty-four (34) west, described as follows:

Commencing at the north quarter post of said section thirty-six (36), thence west along the section line five hundred and seventy-six (576) feet to the east boundary of Hodges property, thence south along said east boundary to the shore of Portage lake, thance easterly and southeasterly along the shore of Portage lake to the north and south center line of said section thirty-six (36), thence north along said center line to the quarter post of beginning.

5. All that portion of lot two (2) in section thirty-six (36),
98 township fifty-five (55) north, of range thirty-four (34) west,
described as follows:

Commencing at the meander corner on the section line north of said section thirty-six (36), run east on said section line two hundred and forty-nine (249) feet, thence south at right angles with said section line to the shore of Portage lake, thence northwesterly along said shore to meander corner of beginning.

6. Also the following-described real estate, rights, and easements, situated in said county of Houghton, to wit:

The vein or lode known as the Pewabic lode, which outcrops on lands of the Pewabic Mining Company, in said county of Houghton, and any other lode or lodes, vein or veins, which outcrop within two hundred (200) feet east of the outcrop of said Pewabic lode, where the same lies under the southeast quarter of section twenty-three (23), in township fifty-five (55) north, of range thirty-four (34) west, in the county of Houghton, and the right to mine and work the said Pewabic lode and such other vein or veins, lode or lodes, being the same property conveyed to the Pewabic Mining Company by Thomas W. Edwards and wife by warranty deed dated the 29th day of October, 1879, and recorded in the register's office of said county of Houghton in Liber 19 of Deeds, on page 353.

7. Also the right to mine by a perpendicular line all minerals lying northwesterly of a line running north fifty-eight (58) degrees west from a point where the Pewabic vein at the surface of the earth crosses the dividing line between the lands of the Pewabic Mining Company and the lands of the Franklin Mining Company, being a part of the same rights and privileges that were conveyed to the Pewabic Mining Company by the Franklin Mining Company by

deed dated February 1, 1862, and recorded September 15, 1875, in the register's office of said county of Houghton in volume 17 of Deeds, on page 9.

99 8. Also the east half and the southwest quarter of section ten (10); also the southeast quarter and the southeast quarter of the southwest quarter and the southeast quarter of the northeast quarter of section nine (9), all in town. fifty five (55) north, of range thirty-four (34) west.

All constituting and intending herein and hereby to embrace all the assets and property of the Pewabic Mining Company, a Michigan corporation, having its principal office in the State of Michigan, in the said county of Houghton.

That all of said assets and property, real and personal, including mining rights and the Pewabic Mining Company's lands above described as leased and any land or lands not hereinbefore described belonging to the said The Pewabic Mining Company and any other property, real, personal, or mixed, and any other assets of said company not herein especially described of every nature belonging to or appertaining to said company, will be sold in one body to the highest bidder.

Bidders to be prepared on the day of sale to deposie ten per cent. of the amount at which the property may be struck off before the sale closes.

Dated Marquette, Mich., November 5, A. D. 1890.

PETER WHITE,
Special Master.

DICKINSON, THURBER & STEVENSON,
THOMAS B. DUNSTAN,
ALFRED RUSSELL,
Solicitors and of Counsel for Complainants.

100 EXHIBIT "A." P. W., Special Master.

STATE OF MICHIGAN, }
County of Houghton, } *ss:*

Brainard T. Jewkills, being duly sworn, deposes and says that he is the publisher of the Portage Lake Mining Gazette, a public newspaper printed and circulated in said county of Houghton, and that the advertisement of which the annexed is a true copy was published in said newspaper once in each week for five successive weeks, six publications, commencing on the 6th day of November, A. D. 1890, and ending on the 11th day of Dec., A. D. 1890, and that he well knows the facts therein stated.

BRAINARD J. JEWKILLS.

Subscribed and sworn to before me this 30th day of January, A. D. 1891.

[SEAL.]

J. H. RICE,
Notary Public.

101 *Legal Notice.*

In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Chancery.

THOMAS H. MASON, WILLIAM HART SMITH, SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY Billings, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

In pursuance and by virtue of an*d* order and decree of the circuit court of the United States for the western district of Michigan, northern division, in chancery, made and dated on the sixth day of May, A. D. 1890, in a certain cause therein depending, wherein Thomas H. Mason, William Hart Smith, and Sullivan Ballou are complainants and The Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company are defendants—

Notice is hereby given that I shall sell at public auction to the highest bidder, at the front door of the court-house, in the village and county of Houghton and State of Michigan, said court-house being the place for holding the circuit court for said county of Houghton and being within the western district of Michigan, northern division, on Saturday, the 20th day of December, A. D. 1890, at 10 o'clock in the forenoon, all the following-described real estate, together with all and singular the houses, buildings, stamp-mill, mining plant, engines, machinery, pumps, rolling stock, mining supplies thereon and therein and belonging thereto, and all mining rights connected therewith, including the stamp-mill plant, with its pumps and buildings, the water front of the stamp-mill site on Portage lake or river, eighty-nine dwellings and mine buildings and shops, and entire mining equipment of the Pewabic Mining Company, said real estate and real interest being as follows, to wit:

102 1. The northwest quarter of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west.

2. The northeast quarter of section twenty-five (25), in township fifty-five north, of range thirty-four (34) west, saving, excepting, and reserving from said northeast quarter, as heretofore reserved in a conveyance to said Pewabic Mining Company by August Coburn and wife, five (5) acres in said section twenty-five (25), which said five (5) acres *is* in square form, with sides of equal length on the north and west lines of said quarter section; excepting also a lot leased to William Tewk September 1st, 1866, the lease of the same being for twenty-five years recorded in Liber One of Miscellaneous Records, page 240, *of records* in the office of the register of deeds of Houghton county, Michigan, described as follows: Lot No. —, in the subdivision of the northeast quarter of section twenty-five (25),

in township fifty-five (55) north, of range thirty-four (34) west; excepting and reserving also from said northeast quarter a tract leased to Isaac Jones July 1st, 1868, the lease of the same being for twenty-five years recorded in Liber One of Miscellaneous Records, page 487, in the office of the register of deeds of said county, described as follows: The lot in the subdivision of the northeast quarter of section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west, the land belonging to the Pewabic Mining Company.

3. Also the southwest quarter of said section twenty-five (25), in township fifty-five (55) north, of range thirty-four (34) west, saving and excepting from said southwest quarter a certain parcel of land conveyed in a deed by the said Pewabic Mining Company to the Franklin Mining Company, the deed bearing date the 21st day of August, 1864, re*i*rded in said register's office of said county in Liber 5 of Deeds, on page 43, described as follows: Beginning at a point on the section line between said sections twenty-five (25) and
thirty-six (36) 422 feet 8 inches easterly from the northeast
103 corner of lands owned by the Detroit and Lake Superior
Copper Company, thence north nineteen (19) degrees twenty-three (23) minutes east eighty-nine feet 9 inches, thence at right angles southeasterly 60 feet, thence south 19 degrees 23 minutes west 63 feet 8 inches to said line between sections twenty-five (25) and thirty six (36), and thence west on said line sixty-three (63) feet seven (7) inches to the point of beginning; excepting also from said southwest quarter of said section twenty-five (25) a parcel of land conveyed in a deed made by said Pewabic Mining Company to Samuel F. Hodge, the deed bearing date the 1st day of November, 1876, and recorded in said register's office of said county *of* volume 17 of Deeds, at page 51, described as follows: Commencing at a point on the east boundary of John Senter's powder-magazine lot at the point where said line is intersected by the east and west section line between said section- twenty-five (25) and thirty-six (36), thence north 19 degrees twenty-three (23) minutes east two hundred and thirty-nine (239) feet, thence due east two hundred and fifty-eight (258) feet, thence at right angles due south to said section line, thence west along said section line to point of beginning; the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company and subject to sale at public vendue under this notice and in connection with other property of said company herein described.

Excepting also from above said southwest quarter of said section twenty-five (25) a certain parcel of land conveyed by a deed from the said Pewabic Mining Company to the Detroit and Lake Superior Copper Company, the deed bearing date November 15, 1878, and recorded in said register's office of said county in volume 19 of Deeds, at page 30, described as follows: Beginning at a point three hundred and forty (340) feet north from an iron pin in section line on the south boundary of section twenty-five (25), town. fifty-five (55) north, of range
thirty-four (34) west, that point being four hundred and twenty
104 four (424) feet east of the southwest corner of said section

twenty-five (25); thence running west twenty (20) feet; thence north nineteen (19) degrees thirty-nine (39) minutes west four hundred and sixty-two (462) feet; thence due east seven hundred and fifteen (715) feet; thence south twenty-seven (27) degrees fifty-two (52) minutes west four hundred and ninety-two (492) feet; thence west twenty (20) feet; thence north eighty-five (85) feet; thence west two hundred and ninety (290) feet; thence south eighty-five (85) feet to place of beginning, containing four and sixty-five one-hundredths (4.65) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company and subject to sale at public vendue under this notice and in connection with other property of said company herein described.

Excepting also from said southwest quarter of said section twenty-five (25) a cer*at*in parcel of land conveyed by a deed from the said Pewabic Mining Company to Johnson Vivian, the deed bearing date the 28th day of April, 1879, and recorded in said register's office of said county in volume 20 of Deeds, at page 439, described as follows: Commencing at the southwest corner of said section twenty-five (25), thence north along section line six hundred and sixty and one-tenth (660.1) feet; thence deflecting eighty-nine (89) degrees eight (8) minutes east two hundred and seventy-nine (279) feet seven (7) inches; thence deflecting seventy (70) degrees tw*ne*ty-one (21) minutes southeasterly three hundred and thirty-nine and eight-tenths (339.8) feet; thence deflecting seventy (70) degrees twenty-one (21) minutes east twenty (20) feet; thence deflecting ninety (90) degrees south three hundred and forty (340) feet; thence deflecting ninety (90) degrees west four hundred and twenty-four (424) feet to place of beginning, containing five and s*n*eventy-eight — (5.78) acres, the minerals and the right to mine the same being
retained by and reserved to said Pewabic Mining Company
105 and subject to sale at public vendue under this notice and in
connection with other property of said company herein described.

Reserving also from said southwest quarter of said section twenty-five (25) a parcel of land leased for ninety-nine years to the Detroit and Lake Superior Copper Company, said lease being of date October 7th, 1869, recorded in Liber One of Miscellaneous Records in the office of the register of deeds of said county, at page 312, described as follows: Commencing at a point on the north boundary of section thirty-six (36), in township fifty-five (55) north, of range thirty-four (34) west, distant four hundred and twenty-four (424) feet east from the northwest corner of said section thirty-six (36), thence running due north four hundred and twenty-five (425) feet to an iron stake; thence east two hundred and ninety (290) feet to an iron stake; thence south three hundred and twenty-five (325) feet to an iron stake; thence east six hundred and forty-one (641) feet to an iron stake; thence south one hundred (100) feet to the north boundary of said section thirty-six (36); thence west along said section line to the point of beginning, containing four and twenty-nine one-hundredths (4.29) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company and subject to sale at public vendue under this notice and in connection with other property of said company herein described.

Excepting also from said southwest quarter of said section twenty-five a tract of land leased to Joseph Hamel for a period of seventy-five years, the lease being of date March 7th, 1870, recorded in Liber One of Miscellaneous Records in the office of the register of deeds of said county, at page 336, described as follows: Commencing at the southwest corner of said section twenty-five (25), thence north along the west boundary eighteen hundred and ninety-one (1,891) feet; thence east nine hundred and sixty-three (963) feet; thence south nineteen (19) degrees east two thousand (2,000) feet; thence west eighty (80) feet; thence north nineteen (19)
106 degrees twenty-three (23) minutes east sixty-eight (68) feet
eight (8) inches; thence north seventy (70) degrees thirty-seven (37) minutes west sixty (60) feet; thence south nineteen (19) degrees twenty-three (23) minutes west eighty-nine (89) feet nine (9) inches; thence west one hundred and eleven (111) feet; thence north one hundred (100) feet; thence west six hundred and forty-one (641) feet; thence north three hundred and twenty-five (325) feet; thence west two hundred and ninety (290) feet; thence south four hundred and twenty-five (425) feet; thence west four hundred and twenty-four (424) feet to point of beginning, containing fifty-one and sixty-five one-hundredths (4.65) acres, the minerals and the right to mine the same being retained by and reserved to said Pewabic Mining Company and subject to sale at public vendue under this notice and in connection with other property of said company herein described.

Reserving also from said southwest quarter of said section twenty-five (25) a tract leased to William Hosking for a period of twenty-five years, the lease being of date September 7, 1869, recorded in Liber One of Miscellaneous Records in the office of the register of deeds of said county, at page 450, described as follows: A lot in section twenty-five (25), town. fifty-five (55) north, of range thirty-four (34) west, near wagon road leading to the Pewabic stamp-mill, on which stands a house formerly owned by Thomas Odgers.

Reserving also from said southwest quarter of said section twenty-five (25) a tract leased to John Phillips for a period of twenty years, the lease being of date June 29th, 1872, recorded in Liber One of Miscellaneous Records in the office of the register of deeds of said county, at page 587, described as follows: A lot of land on the right side of the road leading from the stamp-mill to the mine, on which his dwelling-house is situated.

Excepting and reserving also from the west half of said section twenty-five (25) the right of way for the Quincy and Torch
107 Lake railroad, the instrument being of record in volume 29
of Deeds in the office of the register of deeds of said county, at page 315, the instrument being of date May 23, 1889, described as follows: A tract of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line hereinafter described, across the following pieces of land, viz: The west half of section twenty-five (25), township fifty-five (55) north, of range thirty-four (34) west,

commencing at a point on the west section line of said section twenty-five (25) one hundred and twenty and two-tenths (120.2) feet north of the quarter post, thence south eighty-five (85) degrees twenty-six and one-third (26⅓) minutes east thirteen hundred and twelve and nine-tenths (1,312.9) feet, thence on a two-degree (2) curve to the left two hundred and seventy-eight and five-tenths (278.5) feet, thence north eighty-eight (88) degrees fifty-eight and one-half (58½) minutes east six hundred and forty-three and four-tenths (643.4) —, thence on an eight (8) degree curve to the right three hundred and forty-three and four-tenths (343 4) feet to a point on the north and south center line of said section twenty-five (25) ninety-six (96) feet south of the center post.

4. Also the east five hundred and seventy-six (576) feet of lot one (1), in section thirty-six (36), of township fifty-five (55) north, of range thirty-four (34) west, described as follows:

Commencing at the north quarter post of said section thirty-six (36), thence west along the section line five hundred and seventy-six (576) feet to the east boundary of Hodges' property, thence south along said east boundary to the shore of Portage lake, thence easterly and southeasterly along the shore of Portage lake to the north and south center line of said section thirty-six (36), thence north along said center line to the quarter post of beginning.

5. All that portion of lot two (2), in section thirty-six (36),
108 township fifty-five (55) north, of range thirty-four (34) west, described as follows:

Commencing at the meander corner on the section line north of said section thirty-six (36), run east on said section line two hundred and forty-nine (249) feet, thence south at right angles with said section line to the shore of Portage lake, thence northwesterly along said shore to meander corner of beginning.

6. Also the following-described real estate, rights, and easements situated in said county of Houghton, to wit:

The vein or lode known as the Pewabic lode, which outcrops on lands of the Pewabic Mining Company, in said county of Houghton, and any other lode or lodes, vein or veins which outcrop within two hundred (200) feet east of the outcrop of said Pewabic lode where the same lies under the southeast quarter of section twenty-three (23), in township fifty-five (55) north, of range thirty-four (34) west, in the county of Houghton, and the right to mine and work the said Pewabic lode and such other vein or veins, lode or lodes, being the same property conveyed to the Pewabic Mining Company by Thomas W. Edwards and wife by warranty deed dated the 29th day of October, 1879, and recorded in the register's office of said county of Houghton in Liber 19 of Deeds, on page 353.

7. Also the right to mine by a perpendicular line all minerals lying northwesterly of a line running north fifty-eight (58) degrees west from a point where the Pewabic vein at the surface of the earth crosses the dividing line between the lands of the Pewabic Mining Company and the lands of the Franklin Mining Company, being a part of the same rights and privileges that were conveyed to the Pewabic Mining Company by the Franklin Mining Com-

pany by deed dated February 1, 1862, and recorded September 15, 1875, in the register's office of said county of Houghton in volume 17 of Deeds, on page 9.

109 8. Also the east half and the southwest quarter of section ten (10); also the southeast quarter and the southeast quarter of the southwest quarter and the southeast quarter of the northeast quarter of section nine (9), all in town. fifty-five (55) north, of range thirty-four (34) west.

All constituting and intending herein and hereby to embrace all the assets and property of the Pewabic Mining Company, a Michigan corporation having its principal office in the State of Michigan, in the said county of Houghton.

That all of said assets and property, real and personal, including mining rights and the Pewabic Mining Company's lands above described as leased and any land or lands not hereinbefore described belonging to the said The Pewabic Mining Company and any other property, real, personal, or mixed, and any other assets of said company not herein especially described, of every nature, belonging to or appertaining to said company, will be sold in one body to the highest bidder.

Bidders to be prepared on the day of sale to deposit ten per cent. of the amount at which the property may be struck off before the sale closes.

Dated Marquette, Mich., November 5, A. D. 1890.

PETER WHITE,
Special Master.

DICKINSON, THURBER & STEVENSON,
THOMAS B. DUNSTAN,
ALFRED RUSSELL,
Solicitors and of Counsel for Complainants.

The above sale is adjourned to Saturday, January 24th, A. D. 1891, at the same place and time.

PETER WHITE,
Special Master.

110 EXHIBIT "B," P. W., S. M.

STATE OF MICHIGAN, }
County of Houghton, } *ss:*

Brainerd T. Jewkills, being duly sworn, deposes and says that he is the publisher of the Portage Lake Mining Gazette, a public newspaper printed and circulated in said county of Houghton, and that the advertisement of which the annexed is a true copy was published in said newspaper once in each week for five successive weeks (six publications), commencing on the 18th day of Dec., A. D. 1890, and ending on the 22nd day of Jan'y, A. D. 1891, and that he well knows the facts therein stated.

BRAINERD T. JEWKILLS.

Subscribed and sworn to before me this 23rd day of July, A. D. 1891.

J. H. RICE,
Notary Public.

[SEAL.]

(Endorsed:) 46. Special master's report of sale. Filed February 4, 1891. F. M. Moore, dep. clerk.

111 Circuit Court of the United States, Western District of Michigan. In Equity.

MASON *et al.*
vs.
PEWABIC MINING COMPANY *et als.*

Petition of Alfred A. Marcus for Leave to Intervene.

And now comes Alfred A. Marcus, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, and says that he is the owner of 3,017 shares of the capital stock of the Pewabic Mining Company; that he for himself and other parties, whose names he is willing to disclose, was desirous and fully intended to be present or represented at the sale of the property of the said Pewabic Mining Company by the special master duly appointed by this honorable court in the above-entitled cause, and that he was ready to and would have bid at said sale and paid a large amount of money for the property of said company advertised for sale by said special master; that on January 23, 1891, that being the day before the sale of said property took place, your petitioner discovered for the first time that the sale was advertised for Saturday, January 24th; that thereupon and immediately your petitioner, using all haste and dispatch possible, sent by telegraph a message to the said special master, a copy whereof is hereto annexed, marked A, asking to have the sale of said property postponed at his own expense for the reason that he was never notified of the sale until said date, and that said sale was advertised to take place on the seventh day of the week, which is the Sabbath of your petitioner, and upon which day he is forbidden by his creed to do any business.

That the special master received the message of your petitioner, but ignored it and sold said property for an inadequate sum and for much less than it was worth; that on January 26th, 112 1891, your petitioner sent by telegraph a message, a copy whereof is hereto annexed, marked B, to said special master, claiming the right to bid $721,000 for the property sold at the sale, which message was duly received by said speci-l master; that the said special master in his report of said sale, dated February 3rd, 1891, acknowledged the receipt of the above-mentioned telegraph mes-ages from your petitioner, but said he paid no attention whatever to them, deeming them frivolous, and your petitioner further says that his said offer in his said telegram of January 26 was *bona fide*, and that he was on said date and is now able and desirous of taking the said property at the price named in his said offer, and that he was the highest bidder for said property advertised and as such is, in accordance with the decree of the court, entitled to have his bid accepted and to receive the said property upon payment of the said sum bid within a reasonable time, and your petitioner further says that he is willing and hereby offers to give bond, with satisfactory sureties, to perform in accordance with this his petition. Wherefore your petitioners pray-:

1. That he may be allowed to intervene in said cause and object to the report of sale of the special master bearing date February 3, 1891.

2. That the said sale of the property of the Pewabic Mining Company made on January 24th, 1891, be declared void and set aside and the special master be ordered to convey to the petitioner, as highest bidder, said property upon his paying within a reasonable time the said sum of $721,000.

ALFRED A. MARCUS.

UNITED STATES OF AMERICA, } ss:
Massachusetts District, }

BOSTON, *Feb.* 26, 1891.

Personally appeared Alfred A. Marcus, the foregoing petitioner, and made oath that he has read the foregoing petition and 113 that the same is true except as to those matters therein stated upon his information and belief, and that as to those matters he believes them to be true.

Before me—

JOHN G. STETSON,
U. S. Commissioner.

EXHIBIT A.

BOSTON, MASS., *January* 23, 1891.

To Peter White, special master:

Please postpone sale of Pewabic mine; just found out the sale on our Jewish Sabbath; never notified of sale until today. We hold nearly three thousand shares. Our Jewish friends in London will buy the mine. There are other Jewish buyers who will not attend sale on Saturday. Will most cheerfully pay all expenses for postponement. If not, please announce at sale. (We will protest against this legality.)

(Signed) ALFRED A. MARCUS.

EXHIBIT "B."

BOSTON, MASS., *January 26th*, 1891.

To Peter White, special master:

You ignored my despatch—sold the Pewabic mine. I protest against sale, as you were bound to do all to get the highest price. I claim the right now to bid seven hundred and twenty-one thousand dollars cash, being twenty thousand dollars more than bid at the illegal sale. I shall claim the mine, being the highest bidder, and protest any transfer being made to any one except myself and shall hold you personally responsible.

(Signed) ALFRED MARCUS.

(Endorsed:) Mason *et als.* *vs.* Pewabic Mining Co. *et al.* In equity. Petition of Alfred A. Marcus to intervene. Filed March 3, 1891. F. M. Moore, dep. clerk. 4 p. m.

114 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,

vs.

THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Allen B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

Suit pending in said court, at the city of Grand Rapids, on this 27th day of April, one thousand eight hundred and ninety-one.

Before the Honorable Henry F. Severens, district judge, at chambers.

The petition of Alfred A. Marcus praying, among other things, that he may be allowed to intervene in said cause and object to the report of sale of the special master in said cause; that the sale of the property of the Pewabic Mining Company made on January 24th, 1891, be declared null and void and be set aside, and that the said special master be ordered to offer said property for sale in the manner decreed by the court at the expense of the said Marcus, coming on to be heard, on reading and filing the affidavits submitted in behalf of the said Alfred A. Marcus, together with a certain circular letter issued by the Quincy Mining Company and certain letters addressed to R. M. Morse, Jr., filed with said affidavits, and which were treated as evidence at the hearing, and after reading and filing the affidavits submitted in behalf of Thomas H. Mason and William Hart Smith, in opposition to the prayer of the petition, and after hearing R. M. Morse, Jr., C. E. Hellier, and R. C. Ostrander, counsel for said Marcus, in support of said petition, and Alfred Russell and Don M. Dickinson opposed, in behalf of Thomas H. Mason and William Hart Smith, it is considered
115 by the court and ordered and adjudged that the petition of said Marcus be denied, and that the same be dismissed with ten dollars cost.

H. F. SEVERENS, *Dist. Judge.*

(Endorsed:) (No. 46.) The circuit court of the United States for the western district of Michigan, northern division. In equity. Thomas H. Mason *et al.* *vs.* Pewabic Mining Company *et al.* Order denying petition of Alfred A. Marcus. Filed April 27, 1891. C. L. Fitch, clerk.

116 Circuit Court of the United States, Western District of Michigan. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, & SULLIVAN BALLOU
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY Billings, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, and Alfred A. Marcus, Intervenor.

Claim of Appeals.

The above-named intervenor, Alfred A. Marcus, conceiving himself aggrieved by the orders entered on March 2, 1891, and April 27th, 1891, in the above-entitled proceeding, doth hereby appeal from said orders to the Supreme Court of the United States, and he prays that his appeal may be allowed and that a transcript of the record and proceedings and papers upon which said orders were made, duly authenticated, may be sent to the Supreme Court of the United States.

ALFRED A. MARCUS,
By his solicitors, ROBERT M. MORSE, JR.
RUSSELL C. OSTRANDER.
CHARLES E. HELLIER.

The foregoing claim of appeal is hereby allowed. If a supercedeas is intended let the appeal bond be in the sum of $150,000.

H. F. SEVERENS, *Dist. Judge.*

Dated June 12, 1891.

(Endorsed:) No. 46. Equity. Mason *et als. vs.* Pewabic Co. *et als.* Claim of appeal of Alfred A. Marcus. Filed Sept. 22, 1891. F. M. Moore, dep. clerk. Robert M. Morse, Jr.; Russell C. Ostrander, Charles E. Hellier, solicitors for Alfred A. Marcus.

117 & 118 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable judges of the circuit court of the United States for the western district of Michigan, Greeting:

Whereas lately, in the circuit court of the United States for the western district of Michigan, before you or some of you, in a cause between Thomas H. Mason, William Hart Smith, and Sullivan Ballou, complainants, and The Pewabic Mining Company, Johnson Vivian, Henry Billings, Henry T. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, defendants, and Alfred A. Marcus, intervenor, wherein the decree of the said circuit court entered in said cause on the 2d day of March, A. D. 1891, is in the following words, viz:

"In this cause a common order for the confirmation of the special master's report of sale of all the assets and property of the defendant The Pewabic Mining Company having heretofore been duly entered and proof of service thereof filed, and afterwards all the defendants having filed objections and exceptions to said report of sale, which have been duly argued by counsel of the respective parties, and no motion having been made or served to open the biddings, it is ordered that the objections and exceptions to said report be, and the same are hereby, overruled, and that said report of sale be, and the same is hereby, in all respects confirmed: Provided, however, that nothing herein contained or in said sale shall be considered as passing to the purchasers the claim or claims, if any, against the former directors and defendants in this cause for any sum or sums found to be due from them on the accounting against them directed by the decree in this cause.

H. F. SEVERENS,
Dist. Judge."

119 And afterwards, to wit, on the 27th day of April, A. D. 1891, the following decrees appear of record, viz:

"The petition of Alfred A. Marcus, praying, among other things, that he may be allowed to intervene in said cause and object to the report of sale of the special master in said cause; that the sale of the property of the Pewabic Mining Company, made on January 24th, 1891, be declared null and void and be set aside, and that the said special master be ordered to offer said property for sale in the manner decreed by the court at the expense of the said Marcus, coming on to be heard, on reading and filing the affidavits submitted in behalf of the said Alfred A. Marcus, together with a certain circular letter issued by the Quincy Mining Company and certain letters addressed to R. M. Morse, Jr., filed with said affidavits, and which were treated as evidence at the hearing, and after reading and filing the affidavits submitted in behalf of Thomas H. Mason and William Hart Smith in opposition to the prayer of the petition, and after hearing R. M. Morse, Jr., C. E. Hellier, and R. C. Ostrander, counsel for said Marcus, in support of said petition, Alfred Russell and Don M. Dickinson opposed, in behalf of Thomas H. Mason and William Hart Smith, it is considered by the court and ordered and adjudged that the petition of said Marcus be denied and that the same be dismissed with ten dollars costs.

H. F. SEVERENS,
Dist. Judge."

"The application of the said defendant, The Pewabic Mining Company, to vacate and set aside a sale of the property of said defendant made by the special master, Peter White, and to order a resale of said property coming on to be heard, after hearing Mr. R. C. Ostrander, counsel for the defendant The Pewabic Mining Company, in support of said application, and Alfred Russell
120 and Don M. Dickinson opposed, and after consideration of the said application, it is ordered and adjudged that the said application be denied and that the same be dismissed.

H. F. SEVERENS,
Dist. Judge."

As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of appeals taken by the Pewabic Mining Company and Alfred A. Marcus agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and ninety-one, the said cause came on to be heard before the Supreme Court on the said transcript of record on separate appeals and was argued by counsel—

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decrees of the circuit court in this cause be, and the same are hereby, affirmed with costs, and that the said complainants recover against the said The Pewabic Mining Company and Alfred A. Marcus for their costs herein expended and have execution therefor.

May 16, 1892.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeals notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of said Supreme Court, the 28th day of May, in the year of our Lord one thousand eight hundred and ninety-two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Costs of complainants paid.

121 (Endorsed:) Supreme Court of the United States. No. 1340 & 1416. October term, 1891. The Pewabic Mining Company *v.* Thomas H. Mason *et al.* and Alfred A. Marcus *v.* Thomas H. Mason *et al.* Mandate. Filed August 5th, 1892. F. M. Moore, dep. clerk.

122 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

Thomas Henry Mason, William Hart Smith, and Sullivan Ballou
vs.
The Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company.

Petition for an allowance to the counsel for complainants out of that amount of the fund in court going to the holders of about fifteen-sixteenths of the stock of the Pewabic Mining Company who were not complainants.

Your petitioners, Don M. Dickinson and Alfred Russell, solicitors and counsel for the complainants, respectfully show to the court as follows:

1. The bill filed in this cause was prepared by the petitioners on behalf of the holders, three in number, of about one-sixteenth of the stock of the Pewabic Mining Company, an expired corporation, to protect and administer its assets for the benefit of said holders and all the other stockholders, several hundred in number, holding about fifteen-sixteenths of the stock, who have actively resisted the relief prayed, but who have greatly profited by the granting of such relief without any expense in obtaining it.

The litigation was launched to prevent a pending sale of the assets for $50,000.00, and has resulted in producing a fund in court of $710,000 00. This fund for division among the stockholders would have been only $50,000.00 had it not been for the efforts of the petitioners. The stockholders who have not had any part in producing this fund will receive fifteen-sixteenths of the same and are equitably bound to reimburse your petitioners out of what 123 they receive, and your petitioners show that they have an equitable lien for such reimbursement on that portion of said fund to be distributed to said stockholders.

2. The services rendered by your petitioners appear of record in this court and in the Supreme Court of the United States. The bill was filed in this court in March, 1884, and your petitioners applied for and obtained an injunction before District Judge Withey at Grand Rapids on the 31st of March, 1884, preventing the transfer of the property for $50,000.00, and conducted all the litigation ensuing, some account of which your petitioners proceed to give in its aspects bearing upon the question of your petitioners' compensation.

The Pewabic Mining Company was a Michigan corporation, whose corporate life expired April 4, 1883. The statutory period of three years in addition as a time within which it might sue and be sued and wind up its affairs also expired in 1886.

The original controversy finally decided by the U. S. Supreme Court (133 U. S., 50) was commenced by a bill in this honorable court in this cause to restrain the completion of and to set aside a sale of the assets of the defunct company made by the holding-over directors of that company (who were made codefendants) to themselves for the sum of $50,000.00.

The defendants in this case steadily and persistently contended from beginning to end in the allegations of their answer and in their proofs that their sale so made should not be interfered with and should be affirmed on the ground that it was a fair sale, and that the assets were not worth more than $50,000.00 or thereabouts and by no estimate $100,000.

Paragraph XI of the bill in this cause is as follows:

124 "Your orators further show that while they have been unable to obtain any detailed description of the realty of said company and its other property, yet they charge and aver that the same is of very great value and would at public sale bring at the very lowest over $100,000, and they aver on information and belief that the same is worth in excess of that amount, and yet without and in the absence of such accurate information your orators hereby

offer for the said property $75,000 in cash for the assets of said company, which are proposed to be sold for the sum of $50,000, as provided in said resolution of the meeting of March 26, 1884, and they agree and promise to hold themselves ready to bid that amount at any sale ordered by the court and tender herewith security that they will do so."

Paragraph 11 of answer (answering the above) is as follows:

"These defendants, further answering, say that they are not aware of any inability upon the part of the complainants to obtain any detailed description of the realty of said company and of its other property; * * * that they admit that the same is of considerable value, but, estimated at the market price of the stock of said company at the time of the annual meeting, the same was of about the value of $50,000; that they are wholly unable to say what sum it will bring, if anything, if offered at public sale." * * *

The testimony of all the defendants sustained this allegation of their answer, not only by elaborate proof of the stock valuation, but also by a large body of proof as to the intrinsic value of the mining property itself and by extended demonstrations by experts and mining men through explorations with diamond drills and otherwise; that the copper in the mine had been exhausted and that the chance of a new find of copper from the property was a matter of mere speculation.

125 The testimony of the leading representative of the adverse interests, Samuel L. Smith, found in this record in this cause in this court, is representative of the tendency of all their proofs upon the issue in this cause:

"Q. What was the value of the Pewabic property on the 5th of March, 1884?

"A. I should say from $70,000 to $80,000.

"Q. Over and above the indebtedness?

"A. No; including its indebtedness."

It appears, too, by the record in this cause that the Pewabic property lay between and contiguous to the large-producing copper mines, the Quincy and the Franklin, and that the managing directors and officers of the Franklin were the individuals of the holding-over management of the Pewabic, and that to these representatives of the Franklin, made up into a new corporation, the enjoined sale at $50,000 had been made.

The original injunction bill in this cause was filed March 31, 1884, and this sale was restrained by Judge Withey, who ordered a refer*a*nce to a special master to ascertain the value of the property. The master reported the value to be $498,000. Later, on the merits, Mr. Justice Matthews, sitting in circuit, sustained the position of the minority stockholders, who had filed the bill, holding that on the dissolution of such a corporation the stockholders were entitled to have the matters of the corporation wound up as soon as might be by a public sale to the highest bidder. (Mason *vs.* Pewabic Co., 25 Fed. R., 882.)

Inasmuch, however, as at the argument counsel for the old board were still contending that the property might not sell for the sum of $50,000 and the debts (and they then contended, though not in proof, that under the enjoined sale the proposed vendee was 126 to have paid the debts), and claimed that the offer of complainants in the bill, $75,000, would not cover the price they had fixed, $50,000 and the debts, Mr. Justice Matthews provided in his decree of sale that if no more than the price, $50,000 and the debts, were bid at the sale, then that the enjoined transfer might be carried out. Of his own motion (overruling the contesting nominations of the parties) the said justice appointed as special master Peter White, one of the most responsible citizens in the State and probably the leading man in mining enterprises in northern Michigan.

The decree committed the sale of the property solely to that master, giving him substantially the power of a receiver over the property and the books to facilitate his preparation for the sale; and it further directed him to ascertain what the debts were by an examination of the testimony already taken in the original cause, conferring permission also to order hearings upon the investigation. This decree as to the sale was in all respects affirmed by the Supreme Court of the United States and was re-entered in this court under the mandate on May 6, 1890.

This business of the sale and of expedition of the sale was made a distinct and separate duty of the master, and the provision as to the ascertainment of the debts, it was entirely apparent, was solely for the purpose of fixing the amount which the old board, by the utmost stretch of their contention in argument, whatever the proofs, had claimed would be realized by *cestuis que trust.*, stockholders and creditors, if their sale were not interfered with. This investigation by the master was to have to do only with the debts as they existed at the time of the dissolution, or, at farthest, at the time of the enjoined sale, and this branch of his duty—*i. e.*, preparing for the sale and fixing the upshot price or point from which the bidding should start—was not for the purpose of ascertaining who were the 127 proper distributees, either creditors or stockholders.

This is plain because stockholders are not embraced in the order of ascertainment; the master was not directed to invite creditors in, and, under these proceedings of the master, no creditor could be bound as to the amount or validity of his debt by any conclusion of the master under this duty assigned to him by the decree.

The ascertainment of who were the proper distributees was a matter for subsequent inquiry after sale and after a fund should be realized for distribution. (See the decree on this subject).

Nevertheless, after the entry of the decree in this court under the mandate, the proceedings to reach a sale were delayed by the appearance of the Pewabic Mining Company—the defunct corporation—by attorney (at the first hearing set by the special master), who insisted upon a full accounting with the surviving directors at this stage of the case, and as a like necessary incident to the preparation for the sale an accounting and settlement with every possible creditor through an advertisement to bring them in, and this court ordered the special master to enter into these special hearings.

Of course, all the defendants who were asked to account on this application of the Pewabic Mining Company were the persons who represented that company and themselves and were all there was of the defense throughout the contest, and the object was plainly for delay.

Then under that order of this court there were presented before the master no debts that were not shown by the books of the company, but a lot of claims for counsel fees and the defendants' personal services in these litigations, all arising since the filing of the bill and all for services performed at the instance of the old
128 board, but on the presentation of said claims the Pewabic Mining Company raised a contest before the master on each, and a claim was also presented by the Franklin Mining Company, managed by the same men, as we have seen, and a like objection and contest raised upon it. (See the contested claims listed in the master's report on page 35).

As will be seen by the report, each one of these persons who had figured as a representative of the codefendant with the Pewabic Mining Company throughout the litigation proceeded to enter into a long contest with the Pewabic Mining Company as to the validity of his claim before the sale could be had. (See master's report, page 35.)

Your petitioners finally succeeded through all these difficulties in getting a report filed by the master on Sept. 18, 1890.

It is undisputed that at this time and at the time of the proposed sale the master's report was correct in this, that the activity of copper lands and of the copper product and the high prices for the latter were exceptional in the history of the business. This is important as bearing upon the good faith of the latter contention of the defendants that they sought postponement in order to save the property from sacrifice on a low market.

But all the defendants and the Pewabic Mining Company moved to strike this report of the special master from the files and instituted a mass of other dilatory applications, now importing into the record objections in behalf of the various directors and attorneys for the defunct company as individual claimants and creditors resisting sale.

This court on October 25, 1890, sustained the master's report as to the amount of debts and assets, but ordered the sale to be postponed from October 30, 1890, "until December 20th" on
129 defendants' application and fixed the upshot price for the bids at the amount of the debts, whether paid or not, as they existed at the date of the commencement of the suit, plus $50,000, the complainants then undertaking in open court to bid at least $250,000.

As the sale approached for December 20th all the parties engaged on the other side appeared and presented their second application for a postponement and attacked the special master for not proceeding to a hearing upon the various contested claims above mentioned.

As to the good faith of the applications for hearings before the special master we will refer to the history of the conduct of the defendants set out in the special report of the special master to the district judge and called for by him.

The petitions requiring the special master to pass on the various claims prior to the sale were denied by this court, but the court yielded a second postponement of the sale, ordering the master to adjourn it until January 24th, 1891 (fol. 93).

The members of the board of directors who were dead appeared as petitioners for this postponement.

The applications were again made for postponement of sale set January 24th, and upon a showing and hearing of both sides postponement was refused.

Application was then made to the Supreme Court of the United States for a mandamus to this court to compel postponement, which was refused, and the sale took place. (See the master's full report of it.)

The final bid of the property was $710,000, and it was struck off to the complainants, Messrs. Mason and Smith.

The sale had been advertised for sixteen weeks. It was of property and assets which the stockholders were entitled to have sold
and speedily sold according to the decision of this court
130 eight years before. Any one interested in the property
must have known that the question of its public sale was the sole one being litigated all these years, and the result of the litigation was an affirmance by the supreme court of a decree of sale. The defunct company had ceased to be a subject of interest to any one save so far as its assets were the subject of sale, and no one could know anything about it or hear anything about it from any one interested or from the mere reference to current news regarding this property or copper property, or refer to the newspapers on the subject without being informed of the sale; yet, at this time, after every dilatory method had been used by every person who could by any possibility be brought into the record and after the delays had reached their final limit and the sale was actually taking place, one Alfred A. Marcus came upon the field with a telegram received by the master late in the evening of the day before the sale at Houghton, Mich.:

"(Dated) BOSTON, MASS., *January* 23*d*, 1891.

"To Peter White, special master:

"Please postpone sale of Pewabic mine; just found out the sale on our Jewish Sabbath; never notified of sale until today. We hold nearly three thousand shares. Our Jewish friends in London will buy the mine. There are other Jewish buyers who will not attend sale on Saturday. Will most cheerfully pay all expenses for postponement; if not, please announce at sale. We will protest against this legality.

"(Signed) ALFRED A. MARCUS."

It will be observed that this person was totally unknown to the master (see report), and that he did not claim to be a stockholder.

The master, in the midst of bidders who had travelled thousands of miles in midwinter to reach the place of sale long postponed and which the court had directed him to proceed with, paid
131 no attention to the telegram, and on Monday following the Saturday of the sale he received the following dispatch:

"(Dated) BOSTON, MASS., *Jan. 26th*, 1891.

"To Peter White, special master:

"You ignored my dispatch; sold the Pewabic mine. I protest against sale, as you were bound to do all to get the highest price. I claim the right now to bid seven hundred and twenty thousand dollars cash, being twenty thousand dollars more than bid at the illegal sale. I shall claim the mine, being the highest bidder, and protest against any transfer being made to any one except myself, and shall hold you personally responsible.

"(Signed) ALFRED MARCUS."

It is to be noted that the list of stockholders — in the record, to which the master is authorized by the decree to refer, and that Alfred A. Marcus does not appear to be a stockholder. It is also worthy of remark that in all the showing filed in the subsequent motions in this matter, including the affidavits of Demmon and other officers connected with the defunct corporation, there is no showing that Marcus ever was a stockholder except his own statement in his petition. The other statements in his petition are supported by something in the nature of proof. It is apparent that the thought of clothing him with the character of a stockholder is one that had not occurred to any one until after the objections to the confirmation of the sale of the Pewabic, urged by the defunct corporation and by all the other defendants, had been fully heard on February 21, 1891, and overruled.

On the filing of the special master's report an order was entered on February 7th, 1891, confirming the sale unless cause to the contrary should be shown within eight days. This order was
132 promptly served upon all the attorneys who had appeared in the cause for the defunct company or for the old board of directors, or for any of them, and upon the attorneys for the alleged creditors who had contested. They all appeared to contest, filing two separate sets of objections (not exceptions, according to the proper practice) showing cause against the confirmation. The same were fully argued by the counsel for all the parties. The order overruling the objections and that the report stand confirmed is an absolute one and recites the premises, and was duly entered on Monday, March 2. 1891.

On March 3, 1891, Marcus filed in the clerk's office a paper which was sworn to in Boston five days after hearing of the aforesaid objections of confirmation, wherein he prays—

"That the said sale of the property of the Pewabic Mining Company, made on January 24, 1891, be declared void and set aside, and the special master be ordered to convey to the petitioner, as highest bidder, said property upon his paying within a reasonable time the said sum of $721,000" (p. 82).

Nothing whatever was done upon that petition. It was not served or presented to the court.

On March 13, 1891, another petition was filed by Marcus offering to bid $800,000, and asking that the sale be set aside and the property reoffered. Thereafter, on April 22, 1891, the defunct corporation appeared and supplemented the petition of Marcus by its own petition, based upon that of Marcus, praying that the sale be set aside and for a resale. On April 27th these petitions came up for hearing, and then were filed various affidavits tending to show that Marcus was an orthodox Jew, and that certain persons who had made an offer to support Marcus in a letter to "R. M. Morse, Esq., counsel, Boston, Mass.," were worth or would pay various sums as a part of such offer. In the meantime the standing and character of Marcus had been investigated, and records in Massachusetts showed his want of pecuniary ability and standing. 133

On full hearing and argument, this court dismissed the Marcus petition, with costs, and denied the application of the defunct corporation based upon it, and all the proceedings of this court in the premises have been affirmed in the Supreme Court of the United States. (See 145 U. S., 349, Pewabic Co. *v.* Mason.)

3. Your petitioner- have rendered all the professional services which have resulted in the assets of said Pewabic Mining Company producing $710,000, instead of $50,000.00. Numerous journeys to Marquette, Houghton, Lansing, Grand Rapids, Cincinnati, Boston, New York, and Washington have been necessary in the course of their labors, and collateral litigations, like Mason *vs.* Perkins, reported 73 Mich., 363, have demanded their care, and the expenditures of the petitioners has been large.

For about nine years your petitioners have constantly had the burden of these extensive litigations upon them and in opposition to a large number of the most eminent lawyers in the country.

Long absences in the taking of proofs in the original record and the other branches of the litigation, at places remote from their offices, and attendance at hearings before Special Masters Maynard and White, and all of which required the personal attendance of one or both of petitioners, excluded the possibility of any attendance, while on such service at the places stated, *from* attention to any other business.

Your petitioners pray the court, upon the files and records of this court and on this petition, to make them such allowance, not less than ten (10) per cent. on the amount produced by the sale ($710,000), as may be proportioned to the magnitude of their professional services and expenditures, and of the fund realized and the benefits received by the parties, and that such allowance may be made a lien on that amount of the said fund of $710,000 in court going to the holders of about fifteen-sixteenths of the stock of the Pewabic Mining Company who were not complainants in this cause. 134

And your petitioners will ever pray.

DON M. DICKINSON.
ALFRED RUSSELL.

EASTERN DISTRICT OF MICHIGAN, *ss:*

On this 27th day of February, A. D. 1893, personally appeared before me Don M. Dickinson and Alfred Russell and made oath respectively that they had read the foregoing petition and knew the contents thereof, and that the same are true.

WALTER S. HARSHA,
[SEAL.] *United States Comm'r, Eastern District of Michigan.*

To Messrs. Robert M. Morse, Thomas H. Talbot, J. Lewis Stackpole, and Charles E. Hillier, all of Boston, Mass.; Edward Cahill and Russell C. Ostrander, both of Lansing, Mich., and F. A. Baker, of Detroit, Mich., solicitors and counsel for the Pewabic Mining Company and stockholders therein other than complainants.

GENTLEMEN: Please take notice that the above is a copy of a petition filed in said cause, of which a copy is served on each of you, and
that the matter of said petition will be called up for hearing
135 on said petition and the files — records of said court at the
opening of said court, at Grand Rapids, at 10 a. m. March
21, 1893, or as soon thereafter as counsel can be heard.

DON M. DICKINSON,
ALFRED RUSSELL,
Petitioners in Pro. Per.

EASTERN DISTRICT OF MICHIGAN, *ss:*

James Dougal, being sworn, says he is a clerk in the office of Alfred Russell, and that he served a copy of the foregoing petition and notice of hearing upon each of the following solicitors and counsel of the parties adversely interested as respects said petition by mailing true copies thereof, post-paid at Detroit, to the addresses attached to the names below (which addresses affiant says are the correct addresses of said persons) on Feb. 27, 1893:

Robert M. Morse, 57 Equitable building, Boston, Mass.
J. Lewis Stackpole, 50 State street, Boston, Mass.
Charles E. Hillier, 57 Equitable building, Boston, Mass.
Edward Cahill, Lansing, Mich.
Russell C. Ostrander, Lansing, Mich.
Fred. A. Baker, 69 Buhl block, Detroit, Mich.

And further says not.

JAMES DOUGALL.

Sworn and subscribed before me February 27th, A. D. 1893.

WALTER H. HARSHA,
U. S. Commissioner, Eastern District Mich.

(Endorsed:) Circuit court of the U. S., western dist. of Michigan. Thomas H. Mason *et al. vs.* The Pewabic Mining Co. *et al.* Petition for allowance. Filed Feb. 28, 1893. Chas. L. Fitch, clerk. Don M. Dickinson, Alfred Russell, petitioners in *pro per.*

136 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY Billings, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company.

The answer of the defendant The Pewabic Mining Company to the petition of Alfred Russell and Don M. Dickinson, counsel for complainants, for an allowance of counsel fees out of that part of the fund going to the holders of about fifteen-sixteenths of the stock of the Pewabic Mining Company.

This respondent respectfully shows to the court as follows:

1. The respondent does not deny that, as the petition alleges, the bill filed in this cause was prepared by the petitioners on behalf of the holders, three in number, of about one-sixteenth of the stock of the Pewabic Mining Company, an expired corporation—that is to say, a corporation whose chartered period of thirty years had expired. That bill was filed on behalf of about one-sixteenth of such stock and no more, 2,650 out of 40,000 shares.

But it is not true that the remaining fifteen-sixteenths of the stock "have greatly profited by" the relief decreed in this case on said bill; nor is it true that the litigation instituted by said bill was launched to prevent a pending sale of assets for $50,000.00, so far as fifteen*th*-sixteenths of the stock were concerned. There was then pending no sale of such assets as away from the holders of said fifteen*th*-sixteenths of the stock. It is true that the sale then pending was a sale to a new corporation, a corporation with a different name from the expired corporation and with a corporate period commencing after such expiration and to continue on for a new period of
137 thirty years. But a corporation is a fictitious, not an actual
entity. Technically it holds property, but substantially and actually its property is the property of its aggregate stockholders, and if two separate corporations are composed of precisely the same shareholders, holding precisely the same number of shares in each, then a transfer of assets from one to the other, whatever other objection in the particular case there may be thereto, is not a sale of such assets away from the shareholders in the company selling. After the sale, each and every of them owns all that he owned before. He has not been seller alone, but buyer as well as seller. He has not only sold to, but also bought of, himself. A price affixed to such transfer is merely nominal, not actually affecting the nominal seller or nominal buyer, however small or large it may be named. It affects only the shareholders who do not wish to buy as well as sell.

Such was the character of the sale complained against by the bill prepared by these petitioners (R., p. 8). The proposed new corporation which was to buy was to be composed of the same stockholders, share for share, as the shareholders of the old corporation which was to sell. Each stockholder of the Pewabic Mining Company was entitled to the same number of shares of stock in the new company as were held by him in the old company. This was not matter of speculative hazard; it was absolutely secured in the provisions for the transfer. A certificate of shareholding in the old corporation — absolutely entitled to a certificate of the same number of shares in the new, and each shareholder in the old company was not only entitled to stock in the new company, but was invited and urged to accept such stock. Had such "pe*n*ding sale" been affected, these holders of fifteen-sixteenths of the stock would thereafter have been holders of the same shares as they owned before this bill was filed. In that sale they were entitled to purchase as well as sell.

In the sale decreed and made they have been compelled to sell and have not been allowed to buy in the easy manner which was provided for them in the sale prevented under this bill. They were not allowed to buy merely to the extent of their old ownership by their own several individual act, and merely by a formality.
138 Such a right they had under the sale enjoined, and it is not true, as alleged in said petition, that the enjoined sale was made to representatives of the Franklin Mining Company. It was a sale to the old stockholders of the Pewabic Mining Company and to no one else so long as said old stockholders desired to purchase.

2. Your respondent further answers that the stockholders "holding about fifteen-sixteenths of the stock, who have actively resisted the relief prayed" in the bill prepared by these petitioners, as they allege, have never desired any actual sale of said assets; the only sale which they ever desired or would consent to was a nominal sale to the effect before described, a sale from themselves to themselves, which would leave each and every of them in full ownership of their former shares and of the property which such shares represented.

This retention of their own property is what they have from the time when the lapse of their former corporate existence became known unto them desired and endeavored to procure.

This desire and endeavor they put forth in their original vote of March, 1884, which was a vote, as direct as the laws of Michigan then allowed, to incorporate themselves into a new body corporate and politic. Their action appears in the record of this suit (pp. 6 & 7) to this effect:

At a meeting of the shareholders held March 26th, 1884, at Boston, Mr. W. Hart Smith, one of the complainants, and evidently acting for all the complainants in this cause, the question being upon the adoption of the resolution that the property of the Pewabic Mining Company be sold to a new corporation, and that the stock of such new corporation be received by the stockholders of the Pewabic Mining Company share for share, stated that he was there to protest against any sale of the property except for cash, and introduced a resolution that the board of directors be authorized to sell for cash only, at public or private sale, all the real and personal property of the Pewabic Mining Company at the best prices that could be obtained therefor. Upon this resolution of W. Hart Smith a vote of stock was taken. The total number of votes cast was 31,177, of which only 6,774 voted in favor of a sale of the property of the company for cash.

139 At the same meeting W. Hart Smith filed a written protest, signed by Mason and Smith, representing themselves as owning 2,550 shares, and by Sullivan Ballou, representing himself as owning 100 shares, and by other shareholders, so that the total shares represented as protesting was 5,000 against any sale, transfer, and conveyance of the property of the Pewabic Mining Company to a new corporation and the exchange of shares of the old company for shares in the new. The vote cast at that meeting of the stockholders in favor of selling the property of the Pewabic Mining Company to a new corporation and exchanging the stock in the old for stock in the new company was 27,919 and against it 6,754 shares.

Complainants at that meeting represented 2,650 shares. They launched this litigation against the vote of 27,919 shares out of the total vote cast of 34,673.

The shareholders resisting the complainants put forth the same desire and endeavor nearly four years later (Feb. 4, 1888) in their vote to accept a new charter in terms offered to them by the law-making power of Michigan. (Act of Mar. 19, 1887.)

After the beginning of this suit and while the same was pending the stockholders of the Pewabic Mining Company, two-thirds of the stock voting therefor, attempted to and did reorganize and continue the corporate life of the Pewabic Mining Company under the before-mentioned statute of Michigan, which, as already stated, in terms permitted such reorganization. The supreme court of Michigan held such reorganization to be without effect, for the reason that the statute under which the reorganization took place did not apply under the constitution of Michigan to corporations whose original term of existence was thirty years. Nevertheless the action of the stockholders was another and emphatic protest against the action and purpose of the complainants. It showed that two-thirds at least of the stock desired to keep the property of the Pewbaic Mining Company instead of forcing it upon the market to be sold for whatever sum it would bring.

140 In the two instances just stated said desire and endeavor on the part of the stockholders of the Pewbaic Mining Company engaged in actively resisting the litigation launched by these complainants have been put forth to retain the assets of said company to the benefit and control of all the actual shareholders in said company without any distinction whatever and for no other person or corporation whatever. The privileges they sought to obtain were privileges open to all shareholders in this defendant company and to no one else, and especially not to any representatives of the Franklin Mining Company, as the petitioners allege.

4. This respondent further answers that neither in the institution of this litigation nor in its prosecution have these complainants been moved by a wish or purpose to enhance the price which the

assets of this respondent company would bring when sold. On the other hand, this respondent avers that the wish and purpose of said complainants have been throughout this litigation to prevent fifteen-sixteenths of the stockholders of the Pewabic Mining Company from retaining their interest in said assets and to bring said assets to a compulsory sale, at which said complainants could buy the same at a great loss to said stockholders and a great profit to said complainants themselves.

This is what, as the record of the case now shows, the complainants have eff*a*cted by their prosecution of this litigation, and what they have accomplished they must be held to have aimed at and purposed.

And that such was the aim and purpose of these complainants appears also in the conduct of this suit.

Their bill, filed Mar. 31, 1884 (R., p. 25), prayed for a sale of the assets of this respondent company at public vendue for cash to the highest bidder (R., p. 10). That is, of course, for an early sale. Without resist*e*nce an early sale would have been inevitable; and the case shows that the market value of such assets at and near the filing of said bill was little above $50,000 net (R., p. 53). It was during that market value of those assets that these complainants prayed that this property should be sold.

The highest value which these complainants in their bill
141 set upon these assets was net $100,000, and the highest sum
which they would there offer to pay for such assets was
$75,000. (R., p. 9.)

There is no evidence in the case tending to show that a sale as prayed for upon this bill taken as confessed by reason of non-appearance of this defendant would have produced an*d* advance upon these prices, and yet these petitioners now complain that such a sale was not unresistingly allowed. They expressly complain because this property was not sold "eight years before" it actually was sold (petition, p. 10)—that is, at latest in 1884, at once after the filing of their bill of complaint.

And the highest estimate of the value of said assets which this case shows in two years of litigation is below $500,000. (R., p. 821.)

And even after such an estimate made by the special master in chancery was reported to this court this court was so apprehensive that a sale might not bring more than the price fixed by the defendants, to wit, $50,000 net, that there was inserted in its decree a condition against such a result. If no more than that sum was bid such sale was not to be completed.

From the sale that might have been made in 1886 under these circumstances and disadvantage said assets were saved by an appeal from the decree of sale made May 4, 1886, to the Supreme Court of the United States taken by this respondent, and this respondent further answers that from said May 4 to ——, 1890, when the mandate in affirmance of that decree was filed in this court, the owners of mines adjoining the mineral land of this company and in the line of the mineral lode superimposed upon said mineral land so that their shafts produced in said lode would enter and lead into said mineral

land, to wit, the Quincy Mining Company and the Franklin Mining Company, both dividend-paying corporations and having ample working capital, were engaged in working and exploring their mines, their works and explorations constantly approaching the boundary line of this respondent's mineral land, and said works and explorations were of a constant tendency to enhance the value
142 of said mineral land, and this tendency continued to operate after the aforesaid date of the filing of said mandate down to and beyond the day when said property was sold—that is, Jan. 24, 1891.

And the benefit of such enhancement was secured to said fifteen-sixteenths of said stock by the opposition and resistance of these defendants to the suit of said complainants for a speedy and premature sale when the value of said property had not been developed.

And, further, and when such sale became imminent, defendants in this suit did bestir themselves to procure persons to bid at such sale and to be furnished with the means of making such bid binding, if accepted, and did procure such bidders.

4. The respondent further answers that, these complainants having at the sale of Jan. 24, 1891, become the purchasers of the property before belonging to this company, they could not thereafter take any action whatever in the promotion of two opposite and conflicting interests, and that where one of those interests overbalance the other they must be deemed and held to have been acting in the promotion of that overbalancing interest. In this case the holding of shares by these complainants was only a small portion, while the whole property represented by those shares came to them by purchase. Their only character, therefore, from Jan. 24, 1891, in the eye of this court, must be that of purchasers having an interest not helpful, but opposed to that of all other shareholders.

And by the relation of intention this character of purchasers must be held to govern their previous action.

And in fact it did thus govern; their whole suit was for a very early sale. They opposed a postponement of sale when this court was of opinion that such postponement would increase the amount to be derived from such sale. They resisted an attempt to procure a second postponement when the condition of the market was substantially unchanged from what it was when the first postponement was ordered.

And after the sale, standing upon their rights as purchasers, they succeeded in obtaining from the court, on technical grounds,
143 an absolute confirmation of said sale in the face of a substantial offer of a largely increased price.

5. This respondent further answers that before such confirmation was thus made absolute these complainants had made a sale of said assets at a large advance upon their purchase price, such second sale being arranged and agreed before Jan. 24, 1891, and one reason inducing their grantee to make this large advance was that these complainants had expended a large sum in legal expenses, the greatest portion of which must have been counsel fees to these petitioners. (R. on second appeal, p. —.)

And this sale was made to the Quincy Mining Company, which company was known from *the* this litigation to have coveted this property and would have bid for the same at the auction of Jan. 24, 1891, had there not then existed an understanding that these complainants becoming purchasers would sell to said company. Thus these complainants unfairly and collusively worked a diminition of the number of competitors at said sale in order to reserve for themselves a purchaser at a large advance over the sum at which they obtained said assets, to the great disadvantage and loss of said shareholders of fifteen-sixteenths of the stock.

6. And this respondent further answers that neither under the rules and principles which govern the courts of the United States nor under any decree or order made in this cause is this honorable court authorized to make the allowance prayed for by these petitioners, but under said rules, principles, decrees, and orders the prayer of said petition should be denied.

STONE & GRAY,
Solicitors for Defendants.

THOMAS H. TALBOT, *Of Counsel.*

(Endorsed:) Circuit court of the United States for the western district of Michigan, northern division. Thomas H. Mason *et al. vs.* The Pewabic Mining Co. *et al.* Answer of Pewabic Mining Company to the petition of Dickinson & Russell. Filed Apr. 8, 1893. Chas. L. Fitch, clerk. Cahill & Ostrander.

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144 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

Thomas H. Mason, William Hart Smith, and Sullivan Ballou, Complainants,
vs.
The Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

The answer of Johnson Vivian, defendant, and of Samuel L. Smith and James H. Seager, stockholders, to the petition of Don M. Dickinson and Alfred Russell for an allowance out of part of the fund in court.

The said Johnson Vivian, defendant, and the said Samuel L. Smith and James H. Seager, who are stockholders in the Pewabic Mining Company, reserving to themselves all benefit of exception to the insufficiency of said petition, answering, say that they admit that the bill filed in this cause was prepared by said petitioners, but they deny that it was prepared and filed for the benefit of all the stockholders of said Pewabic Mining Company; but, on the contrary, these defendants say that said bill was filed and said litigation has been carried on by said petitioners in the interest of and for the benefit of the complainants and other persons in interest with them who were officers of and interested in the Quincy Mining Company, a mining corporation owning property adjoining that of the Pewabic Mining Company, for the purpose of obtaining title to and possession of the real estate and mining plant of said Pewabic Mining Company at the lowest price possible; that it is true that the said property of the Pewabic Mining Company was finally sold for a much larger sum than it was supposed to be worth or could have been sold for at the time of the commencement of this suit; but they deny that such increased price or sum was obtained by or through the exertions of said petitioners. The value of the said property increased during the years of the pending litigation largely because of mining 145 operations carried on by the said Quincy Mining Company and the Franklin Mining Company at an expense and outlay by those companies of from $350,000 to $500,000 on either side of and adjoining the mining plant of the said Pewabic Mining Company, which proved and demonstrated that the ground and territory of said Pewabic Company were much richer and more valuable than had been supposed by anybody acquainted with the premises.

That at the time of the filing of the bill in this cause it was generally supposed by mining men that the Pewabic mine and valuable mineral ground had been nearly worked out, but that the subsequent deep mining and operations aforesaid developed richer ground in the vicinity of said property, as will more fully appear by reference to annexed correct map or diagram, which these defendants ask may be taken as a part of this answer.

That the records of this court will show that during the summer and fall of 1890 the said petitioners made every effort in their power to bring on a speedy sale of said property in the interest of the complainants in this cause; that had said property been sold when first advertised for sale it would, in the judgment of these defendants, have brought a much less sum than that finally obtained for it; that it is within the knowledge of this court that said sale was twice postponed upon the application and motion of the defendants therein, and that said petitioners and the complainants opposed such postponements by every means at their command and possible.

These defendants further say that they verily believe that said sale produced a much larger fund than could have been obtained for said property at any time within ten years prior to January, 1891; that pending the postponement of said sale a combination of bidders was formed, which was represented at such sale, and the bid of $700,000 was made by a party not in the interest of said complainants, but in the interest of the defendants herein; that had such sale taken place at an earlier day such interest would not have been so fully represented, and the property, in the judgment of these defendants, would have been sold for a much less sum.

That said property, soon after such sale, was turned over by the purchasers, the complainants, to the Quincy Mining Company 146 in consideration of 10,000 shares of the treasury stock of said Quincy Company, which stock was worth in the market soon after said transaction the sum of $1,200,000, and is worth at the present time $1,300,000, and within the past two years has been worth in the stock market as great a sum as $1,500,000 or thereabouts, as these defendants are informed and verily believe to be true.

That the history of this prolonged litigation shows that said petitioners have not conducted the litigation as though they occupied a trust relation toward the defendants in said cause by their conduct, nor have they worked for their interest or protection, but their labors have been antagonistic to the interests of said defendants, and these defendants submit that the said petitioners should be compensated by the complainants, whom they have so faithfully served.

That these defendants respectfully submit that the entire of such fund, and not $\frac{15}{16}$ of it, nor any other fractional part thereof, should bear the burden of paying all reasonable charges for services of counsel that have contributed to the accumulation and enlargement of said fund; that they believe that the services of Cahill & Ostrander, Fred. A. Baker, and J. Lewis Stackpole have contributed to this end; that the records and files of this court show that said last-named lawyers labored hard and successfully to obtain a postponement of said sale to a time when rival bidders appeared and contested for the property, and by such rivalry run the bidding up and accumulated the large sum of $710,000.

That said lawyers were employed by the old directors of the said Pewabic Mining Company and by the advice and approval of a large number of stockholders acting in the interest of all of the stockholders of said company.

These defendants further say that they are the owners of a considerable amount of the stock of said company, to wit: Said Johnson Vivian is the owner and holder of 957 shares, the said Samuel L. Smith is the owner and holder of 1,998 shares, and said James H. Seager is the owner and holder of 957 shares of the capital stock of the said Pewabic Mining Company.

147 That, in the judgment and opinion of these defendants, all just claims against the estate of the said mining company should be paid out of said fund; that among such claims, in addition to those above named, they recognize the claim of the Franklin Mining Company and the National Bank of Houghton; that the larger part of the claim of the said Franklin Mining Company is for money loaned to the directors of the Pewabic Mining Company to redeem its said estate from a sale on execution and used for that purpose; that said money was borrowed by said directors during the three years in which they were authorized to wind up the business of said corporation; that had not said money been borrowed and said redemption made the identical property which has since produced the sum of $710,000 would have been lost to the stockholders, for valid judgments had been obtained and the property bidden in by one of the attorneys for the complainants. The remainder of the money so borrowed was used in the payments of debts which, had they not been paid, would have resulted in similar judgments. The claim of the National Bank of Houghton is for

money had and used by the superintendent of the Pewabic Mining Company in carrying on the business of the company in good faith. The company had the benefit of the money, and the debt, we believe, should be paid. It consists of a small overdraft in bank account.

JOHNSON VIVIAN.
SAM'L L. SMITH.
JAMES H. SEAGER,
By his agent, S. L. SMITH.

UNITED STATES OF AMERICA, Western District of Michigan, } *ss:*

On this 16th day of March, 1893, personally came before me the above-named Johnson Vivian and Samuel L. Smith and severally made oath that they had heard read the foregoing answer by them subscribed and know the contents thereof, and that the same is true of their own knowledge except as to the matters

148 therein stated to be upon their information and belief, and that as to those matters they believe it to be true.

B. O. PEARL,
Notary Public in and for said County of Marquette.

(Endorsed:) U. S. circuit court, western dist. of Mich., northern div. In equity. Thomas H. Mason *et al. vs.* The Pewabic Mining Company *et al.* Answer to petition for allowance. Filed Apr. 19, 1893. Chas. L. Fitch, clerk.

(Here follows drawing marked p. 148*a*.)

149 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

To the court:

In pursuance and by virtue of the order of this court made in the above cause and bearing date the — day of ——, A. D. 18—, by which it was referred to me, the undersigned, as special master of this court, to examine witnesses and to take proof upon certain claims filed in this cause and to ascertain the same and report my findings in the premises to this court with all convenient speed, I, the subscriber, as special master aforesaid, residing at Marquette, Michigan, do respectfully certify and report my findings in the premises as follows:

Having given proper notices to all the parties in this cause and to the parties having filed claims against the fund herein, I have held hearings on said claims at Houghton and Marquette, Michigan, and in the city of Boston, Massachusetts.

All the parties who desired to do so were permitted to give testimony as to any claim filed with me against the Pewabic Mining Company, and the testimony taken was reduced to writing by a competent stenographer, and I respectfully submit the same, which is hereto attached, for the consideration of the court.

At the hearing before me at Marquette on the 28th of August, A. D. 1890, the claim of Thomas H. Talbot was presented, amounting to $16,400.00, statement of which claim I attach hereto and make a part of this my report, marked Exhibit "A."

At the hearing in Boston the said Talbot produced a large additional amount of testimony in support of his claim and also 150 deposited with said special master three books, attached together with a wire, which at his request I return herewith, marked Exhibit " B " (being three small printed pamphlets).

At the hearing at Boston on September 24th, A. D. 1892, said Talbot presented a supplemental statement further supporting his services and claims and making an additional claim of $48.35, which supplemental statement I return herewith, marked Exhibit "C."

All the testimony taken in support of the claim of said Thomas H. Talbot is herewith returned into court and made a part of this my report and finding.

The special master, after fully considering said testimony and all of the facts and circumstances before him, respectfully reports and finds, as to this claim, that the professional services claimed therein to have been performed were not rendered to the Pewabic Mining Company, but to other parties; that said services were performed after the charter of the Pewabic Mining Company had expired; that the facts and circumstances did not warrant the litigation for which these services are charged, and that the litigation was instigated and launched, not on behalf of said company, but of certain individuals, and that the said Talbot had not sufficient authority to appear as counsel for the said Pewabic Mining Company, and that said services, in any event, were not reasonably worth the amount charged therefor. I therefore find said claim void and not a valid one against said company.

Daniel L. Demmon presented a claim for services as secretary and treasurer of the Pewabic Mining Company amounting to $14,202.33. Considerable testimony was taken in support of this claim at the hearing at Boston, which is hereto attached and made a part of this my report and finding.

After full consideration of the said claim of Daniel L. Demmon I find that said claim is not a valid claim against the said Pewabic Mining Company for the reason that the charter of the 151 Pewabic Mining Company had expired when the services were rendered; that there was no valid contract between the Pewabic Mining Company and said Demmon for compensation for his services as secretary; that the said Demmon had a large amount of the assets of the said company in his hands and under his control which in the opinion of the special master have not been satisfactorily accounted for, and that the said services were not reasonably worth the sum charged; and the special master recommends that the account between the said Demmon and the Pewabic Mining Company should be examined by two expert book-keepers or accountants. As the matter now stands the special master finds the claim void and invalid.

The statement of the claim of said Demmon is herewith returned, marked Exhibit "D."

Thomas H. Perkins presented a claim for $5,000 for services as president of the Pewabic Mining Company, statement of which claim is herewith returned, marked Exhibit "E," and the testimony in support of said claim is herewith returned and made a part hereof.

And the special master, after full consideration, finds that said claim is not a valid one against the Pewabic Mining Company for the reason that if any services were rendered they were rendered after the charter of said company had expired, and were of no value whatever, and that there was no contract between said Perkins and the said Pewabic Mining Company for compensation for the services of said Perkins as president, and the claim is void.

Henry J. Stevens presented a claim for services as solicitor of said company amounting to $3,000.00. The testimony in support of the same is herewith returned and the statement of said claim herewith returned marked Exhibit "F."

The special master finds that services, if any were rendered, were rendered after the expiration of the charter of the said Pewabic Mining Company and were without value to said company and were unnecessary and were not rendered in behalf of said company but of certain individuals, and that said Stevens was not
152 employed by any authority of said company, and that said
claim is invalid as to said company.

Stone & Gray presented a claim for legal services, amounting to $605.35, and said special master finds that for services rendered in a large measure to said special master that said amount is a reasonable and valid claim against the Pewabic Mining Company's estate, and the special master recommends the payment thereof.

The statement of said claim is hereto attached, marked Exhibit "G."

The Franklin Mining Company presented a claim of $40,495.13, claiming to be for a loan of $30,000.00 and $10,495.13, as interest on said loan to the Pewabic Mining Company. Said Franklin Mining Company also presented an open account, claiming a balance against said Pewabic Mining Company of $1,745.41.

After examining the testimony presented in both of these claims and all of the facts and circumstances in relation thereto the special master finds, from the statements of the claims presented, that the entire of said amount purports to have accrued since the expiration of the charter of the Pewabic Mining Company; that the Franklin Mining Company had no right or power to loan money; that the Pewabic Mining Company had no authority to borrow the same; that the proof as to the circumstances of said loan is not at all certain or that it was necessary, if done, and that it appears from the testimony that the said Franklin Mining Company was and is largely indebted to the estate of the Pewabic Mining Company for various uses of Pewabic Mining Company property, to at least an amount sufficient to offset all claims of the said Franklin Mining Company against the estate of the said Pewabic Mining Company, and the special master finds that the said claims of the said Franklin Mining Company are invalid as against the fund now in the hands of the special master.

In connection with this matter a printed copy of resolution, dated July 18th, 1885, marked Exhibit "H," and another paper 153 signed by Daniel L. Demmon and marked Exhibit "I," are hereto attached and made a part of this report.

Charles A. Barnard filed a claim of $800.00 for assessments voluntarily paid by him.

The special master finds that said claim is barred by the statute of limitations and is a frivolous claim. The statement is herewith returned, marked "Exhibit J."

The National Bank of Houghton presented a claim of $208.78, of doubtful validity, for the reason that unauthorized person or persons drew checks on said bank against the credits of the estate of the Pewabic Mining Company. It might be possible that this claim could be explained in such a manner that it would be a legal claim. As it now stands the special master finds it void.

Johnson Vivian presneted a claim of $8,483.44, which the said Vivian admits he has paid himself from rents collected and property sold of which he assumed the custody and control, but claims he presented the same as a matter of precaution, a statement of which claim is herewith returned, marked Exhibit "K."

The special master finds said claim invalid.

Another paper, marked Exhibit "L," is returned herewith, which said paper was filed by Johnson Vivian, but for what purpose the special master is not informed.

The claims of Arno Jaenig, $350.00; James H. Vivian, $1,650.00, and Eldred Noble, $699.00, were presented, but it was admitted at the same time that all of these claims had been paid out of collections from some source or sources and were presented only for greater precaution. The special master finds said claims invalid.

The special master returns herewith, marked Exhibit "N," testimony taken on all or nearly all of the foregoing claims and makes it a part of his report.

The next hearing before the special master was held at 154 Marquette September 5th, A. D. 1892, and the testimony taken thereat is returned herewith and made a part of this report, marked Exhibit "O."

On motion of Russell C. Ostrander, further hearing was adjourned to the Parker house, Boston, Massachusetts, on September 20th, A. D. 1892, as will appear by reference to said record, marked Exhibit "O."

At the hearing in Boston on September 20th, 1892, the hearing was adjourned to September 21st, A. D. 1892.

Robert M. Morse presented a claim for legal services, marked Exhibit "A," amounting to $10,000.00, all the items of which purport to be for services rendered in the year 1891 and in February, 1892. The special master finds that said services were rendered after the expiration of the charter of the Pewabic Mining Company; that they were not rendered for the benefit of the estate of the Pewabic Mining Company; that there was not sufficient authority for the employment of said Morse to bind the property of the said Pewabic Mining Company, and that the services were rendered in litigations against the interest of the property of the Pewabic Mining Company, and that said claim is invalid as against the property of the Pewabic Mining Company.

J. Lewis Stackpole filed a claim for legal services amounting to $6,665.00, statement of which claim is herewith returned, attached hereto and marked Exhibit "P."

Charles E. Hellier filed a like claim for $2,500.00.

By the testimony it appears that the services for which compensation is claimed were rendered in 1891 and 1892, and the special master finds as to these claims that such services as were rendered were rendered long after the expiration of the charter of the Pewabic Mining Company; that there was no valid authority for the employment of said claimants which could bind the Pewabic Mining Company, and that as to the Pewabic Mining Company said claims are invalid.

A brief for Robert M. Morse, J. Lewis Stackpole, and Charles E. Hillier, marked Exhibit "Q," is herewith returned.

155 Edward Cahill and Russell C. Ostrander filed a claim for $11,514.32, statement of which is herewith returned, marked Exhibit "R," the same being for legal services claimed to have been rendered from February, 1890, to the date of last appeal and for expenses and disbursements paid. The same parties subsequently filed a corrected statement, herewith returned, marked Exhibit "R," claiming the sum of $10,541.29.

The special master finds that such services as were rendered were rendered subsequent to the expiration of the charter of the Pewabic Mining Company, and that said services were unauthorized by said company and the same is not a valid claim against the property of the Pewabic Mining Company.

Fred. A. Baker filed a claim for $3,250.00, statement of which is hereto attached, marked Exhibit "S," claiming compensation for services rendered since the expiration of the charter of the Pewabic Mining Company, and the special master for like reason finds said claim void against the property of said company.

And now as to each and all of the above-named claims, to wit, the said Thomas H. Talbot, the said Henry J. Stevens, the said Robert M. Morse, the said J. Lewis Stackpole, the said Charles E. Hellier, the said Edward Cahill and Russell C. Ostrander, and the said Fred. A. Baker, for professional services and expenses incidental thereto the special master also finds that said services were rendered and said expenses incurred for and in behalf of interests adverse to the general body of stockholders and creditors of the Pewabic Mining Company and were all rendered after the commencement of the suit in the above-entitled cause, and were rendered and had in said cause in behalf of the defeated parties in the various branches of the litigation therein, and that all the said services rendered at every stage of the litigation were adverse to the best interest of the estate of the Pewabic Mining Company, including the postponement of the sale.

156 A large amount of testimony was taken at Boston, which is herewith submitted and returned, marked Exhibit "T." The testimony was not sworn to or signed, oath and signature being waived by all counsel present.

The special master would respectfully report that Daniel L. Demmon has now forwarded to him the stock-certificate books, stock ledger, and transfer books, and that the special master can now proceed to verify the stock issued and prepare a list upon which to pay a dividend upon the stock when ordered to do so by this honorable court.

The special master may have omitted to include everything necessary for him to report upon; and, if so, he begs the instruction of the court as to what further steps to take.

All of which is respectfully submitted as the report and finding under the order above set forth.

Dated at Marquette, Mich., Feb'y 13, 1893.

PETER WHITE,
Special Master.

(Endorsed:) 46. Thomas H. Mason, William Hart Smith, and Sullivan Ballou, complainants, *vs.* The Pewabic Mining Company, Johnson Vivian, Henry Billings, Thomas H. Perkins, Alden B. Butterich, Daniel L. Demmon, and The Pewabic Copper Company, defendants. Special master's report. Filed Feb'y 13th, 1893. F. M. Moore, dep. clerk.

157 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, THOMAS H. Perkins, Daniel L. Demmon, and The Pewabic Copper Company.

In the matter of the petition of Don M. Dickinson and Alfred Russell for an allowance of counsel fees out of the fund in court.

This matter came on for hearing at a former day and was argued by counsel, and the court having duly considered the same, it is now here ordered and adjudged that the said petition be disallowed.

(Endorsed:) Entry. H. F. Severens, judge. Entered of date 13th July, '93.

158 The Circuit Court of the United States for the Western District of Michigan, Nor. Div. In Equity.

Thomas Hart Mason *et al.*
vs.
The Pewabic Mining Co. *et al.*

Upon exceptions to the report of the special master in regard to claims against the fund in the above-entitled cause.

These exceptions were brought on for hearing before me at Grand Rapids in April last, and simultaneously therewith several petitions for allowances out of the same fund by counsel for defendants covering the identical charges and claims which they had presented to the master by whom they were disallowed. At the same time there was also presented and submitted a petition by the solicitors for the complainants for an allowance of counsel fees.

Other exceptions relate to the action of the master in disposing of the claims of third parties for ordinary debts not of a professional nature.

The claims upon the fund by the various counsel who have been engaged in the case aggregate a sum total of $124,099.99. The presentation of these large claims has devolved upon the court a very embarrassing duty.

The Pewabic Mining Co. was organized in April, 1853, subject to a provision in the constitution of the State which limited its corporate life to the duration of thirty years. By a later increase of its stock the number of shares of $25 each was 40,000. The company carried on a general mining business and acquired valuable mining property. It was actively engaged in that business when in 1883 its life expired, quite unexpectedly, it would seem.
159 No preparation for closing up had been made, and when it was discovered that its corporate existence was ended the managers undertook to devise a scheme by which it could practically be renewed. The plan finally adopted was to form a new corporation to be called the Pewabic Copper Co., to which the net assets of the old corporation should be transferred at a fixed valuation of $50,000, the stockholders in the old to become stockholders in the new corporation, or, if they did not elect to do this, then they were to receive in cash their proper proportion of the assets as valued. At a meeting of the stockholders of the Pewabic Mining Co., 1884, this plan was approved and adopted by a very large majority, the vote standing 27,919 in favor of to 6,754 against it, and the transfer was ordered to be made accordingly.

The complainants in this case, who represented about $\frac{1}{15}$ of the whole capital stock and who were of the minority, being dissatisfied with the plan adopted, filed this bill in this court against the old corporation and its directors and the new corporation, the Pewabic Copper Co., to restrain the transfer and to compel a public sale of the property, the winding up of the old corporation, and the distribution of its net assets to the stockholders, and the bill invited all the other stockholders who concurred and were willing to share the expenses to come in and participate in the suit and share in the benefits of the relief sought. The other $\frac{14}{15}$ of the shareholders, however, took an antagonistic position. The defendants appeared and resisted the bill, claiming that the majority, in the protection of their own interests, were entitled, as a matter of right, to make the disposition in question, it being, as was alleged, fair and equitable to all the stockholders; but it was decided by this court and afterwards on appeal by the supreme court that the majority had not the right to coerce the minority by compelling them to either go into another corporation or sell their stock at a valuation 160 fixed by the purchasers, and that the minority were entitled to have the value of the property ascertained by a public sale according to the customary course of the court in analogous cases. The decision of the supreme court was in January, 1890. The case was thereupon remitted to this court upon a mandate diresting this court to ascertain the debts of the Pewabic Mining Co., and thereupon make an offer of the plant of the company at public sale, and if no more should be bid than the aggregate amount of $50,000 and the debts thus ascertained that the sale should be dropped and the transfer to the new company, which the majority desired to consummate, should be allowed to proceed. If more than such amount should be bidden it was directed that the public sale be proceeded with. This court was further directed to definitely ascertain the debts of the corporation, to require an accounting by the directors of their dealings with the company's assets subsequent to the date of the expiration of its chartered existence, and upon getting together the whole fund to make proper distribution thereof. Costs of both courts were awarded upon the decision of the supreme court.

Upon the reception of the mandate the proper decree was entered here in conformity therewith, whereby the provisional ascertainment of the debts of the company was referred to a special master, with directions to report, and upon this being done and confirmed the special master was directed to proceed with the sale. He was further directed to definitely ascertain the debts, to take an account with the directors of the company, and to make report from time to time and finally to make distribution under the order of the court.

The special master proceeded upon the reference and after considerable delay he made report upon the first branch, and after still further delay in the court arising from the defendants' objections the sale was ordered to be proceeded with upon a basis for a starting point in the bids fixed by the court upon the master's report.

The sale was several times postponed upon the motion of the defendants, but at length took place on the 24th day of January, 1891, 161 and the property was sold for $710,000. Various motions were made by the defendants to vacate the sale and were denied. There was another appeal to the supreme court and the proceedings affirmed.

Thereupon the master proceeded with that branch of the reference providing for the definite ascertainment of the debts of the Pewabic Mining Co., and his report thereon is the basis of these exceptions.

I have forborne thus far to go into the details of the proceedings in this court subsequent to the filing of the mandate upon the first appeal, and shall not do so in the further discussion of the case any further than seems necessary to a proper disposition of the matters before me.

At that time the substantial controversy had been finally settled and the rights of the parties determined. What remained was to carry the decree into effect. The brunt of the contest was apparently over. The complainants were entitled to a prompt enforcement of the decree. The defence was still represented by Stone & Gray, of the Michigan bar, and Mr. Talbot, of Boston. Immediately there was a large augmentation in the number of counsel employed to represent the defendants. Messrs. Cahill & Ostrander and Mr. Baker, of Michigan, and Mr. Morse, Mr. Stsckpole, and Mr. Hillier, of Boston, were added. It is difficult for the court to understand the purpose of this for any direct object of the suit. Of course the right of a party who pays with his own money to employ as many lawyers as he pleases cannot be gainsaid; but quite different considerations are presented when under the guise of authority additional counsel are employed to conduct the defence in the interest of individuals in the name of a mere figure-head, and the proposition is made to make the other party, who after a protracted and costly struggle has come to his own, contribute to the payment of the services of those who have been instrumental in withholding
his rights without legal justification. In this case it is easily
162 seen that the original contest was between the minority stock-
holders who complained and the majority stockholders who resisted them. The defunct corporation was a nominal defendant. It stood, in fact, as the representative of the majority of the stockholders during the litigation of the principal controversy, and its name was used by them to promote their own interests by a defence. It is not ressonable to say that this already dissolved corporation represents the complainants while it is being used to resist their suit and defeat their rights. A court of equity will look under the mere form of things and descern the essential fact and govern its action accordingly.

As the litigation went on the controversy took on more emphatically the character of a partisan contest in the interest of two other mining companies with whom the dominant party litigants were respectively connected, each of which companies was striving to acquire the control of the property involved in the suit. In the end the complainants, having been the highest bidders at the master's sale, have acquired the mining property for the Quincy Mining Co., to whom it has been transferred.

The counsel who have been managing the case on the part of the defence since the date of the affirmance of the principal decree, and two or three who were previously in the case, filed claims for their professional services as debts of the Pewabic Company before the master. Other non-professional claims were submitted to him. After hearing all the proofs offered the master has filed his report thereon, denying for reasons stated all the claims but one, which he allows. Exceptions having been taken to his findings, the counsel have been heard in argument thereon.

These exceptions will first be considered, and upon the disposition of these the petitions for allowances will be taken up.

It is necessary, first, to ascertain the rule which should govern the court in reviewing the master's report on exceptions.

163 The effect to be given to the findings of the master is stated in Tilghman *vs.* Proctor, 125 U. S., 136: "In dealing with the exceptions, the conclusions of the master depending upon the weighing of conflicting testimony have every reasonable presumption in their favor and are not to be set aside or modified unless there clearly appears to have been error or mistake on his part." This is quoted in Callaghan *vs.* Myers, 128 U. S., 617–666, as an approved statement of the doctrine of the court upon that subject. The question, therefore, in dealing with these exceptions, will be whether the master had before him evidence which would warrant his conclusions, and the burden is upon those alleging the exceptions to show clearly the error of the master.

It was proper for the master to take into account the general nature of the case and all the facts and circumstances connected with it which had transpired subsequent to his appointment and under his cognizance. He knew that the contending parties were interested in two great rival mining companies, who were struggling to get control of the Pewabic mine, and he had sufficient reason for believing that the litigants were respectively striving to carry the property into their favored camp. He knew that as soon as it was determined that a public sale was to be made of the mine except in a contingency, which was very certain not to happen, a large number of additional counsel were brought into the defence and a series of dilatory tactics adopted which he might reasonably believe were in the interest of other parties than the Pewabic Mining Co. The financial condition of the Franklin Co. was not such as to enable it to meet the sale. It was making effort to prepare itself. Mr. S. L. Smith, one of its directors, was on the ground in Michigan professing to act as agent for the Pewabic Co. (on what authority does not appear) and co-operating with the counsel in the dilatory proceedings which were being taken. It is said by one of the Michigan counsel that he was employed by two other counsel specially to appear 164 for the Pewabic Co. and defend its interests as distinct from those of the directors, and that Smith paid him money and promised he would be further paid for his services. What the need of this was, if all the counsel already in the case were employed for that purpose it may have troubled the master to comprehend, and the detail of the proceedings had before him for the purpose of his former report as well as of those upon which the present report is founded show clear indications which might be regarded by him

as strengthening the belief that the defence was not conducted primarily in the interest of the Pewabic Mining Co. Among others of this sort he must have observed that the large claim against the Pewabic Co. presented by the Franklin Mining Co. was during both of his investigations promoted by counsel for the defence. It was on their motion and their appearance for the Franklin Co. and for the convenience of that and other claimants that the master adjourned his hearing from Marquette to Boston, and a long trip at considerable expense to the fund was undertaken. None of the counsel for the defence acted for the Pewabic Co. there, but some of them assisted the presentation of the claims of the Franklin Co. and others. Indeed, from first to last, that Co. has had no other counsel to represent it in the prosecution of the claim. They allege exceptions against the actions of the master exonerating the Pewabic Co. from the claim of the Franklin Co. It is true that one of them, in the name of that company, filed objections to the claims of the Franklin Co. and others during the proceedings prior to the sale, those objections consisting of a proposition of law that the Pewabic Co., being extinct, it had no legal capacity to incur a debt, a proposition which they have always contended is wholly untenable, and of a denial of liability to the extent claimed. No step was taken by them to maintain other ground. The master may not have unreasonably concluded that the filing of these objections was a part of the action taken to
protect the litigation and postpone the sale. It was then
165 strenuously insisted that all the claims should be definitely
passed upon before the sale.

None of the measures adopted in the name of the Pewabic Co. is any more easily referable to its real defence than to the object which all the appearances indicated. If it be said that after the sale was finally confirmed the counsel had more liberty of action, the answer would be that there was nothing to show to the master that there had been any change of relation.

The point was made on the argument of these exceptions that, whatever the motives of their employers, if those employers stood in such relation to the company as authorized them to contract in its name, the counsel were not bound to investigate their private purposes, but I think the master may properly have held that it would be imputed to them that they should have known what was apparent to all others having to do with the case, and that their employment for the purpose intended at the expense of the Pewabic Co. would be a breach of trust. It ought rather to be implied that they undertook in the name of the corporation, by means which were permiss*a*ble by the practice of the court and not injurious to the corporation, to accomplish the object their employers had in view.

It is right to say that the master does not report that the Pewabic Co. has suffered any prejudice from what has been done in its name, or that the counsel contemplated any such result, and I feel bound to say, in justice to them, that no such prejudice has happened, and that there is no ground for imputing to them that they anticipated it was likely to happen; for which, in a legal point of view, the protraction of the litigation for the purpose indicated was not justifiable. The accidents of the situation were such that no real injury happened. The development of the adjacent mines demonstrated the value of the Pewabic, and the continuation of the rivalry carried the price at the sale up to a figure not thought of in the beginning.

166 These facts are referred to because they were the incidents of the defence from the time when the case first came back from the supreme court to the second affirmance in that court—a period covering almost the whole of these claims—for the purpose of demonstrating the conclusion that the services rendered were not to the Pewabic Co., but in the interest of the Franklin Co. and those affiliated with it.

Under these circumstances the question recurs whether it is equitable that those complainants should be compelled to help pay for conducting the defence during that period. The master thinks not and I agree with him.

In the case of Mr. Talbot, who was employed before the original decree of affirmance in the supreme court, I should have thought that for some of the services rendered prior to that date he might be entitled to compensation as being in the actual employment of the Pewabic Mining Co., for I am convinced that the master was in error in supposing that because of the fact that the corporation had reached the limit of life prescribed by the constitution of the State it was so far extinct that it could not incur any obligation. My opinion is that it had a continued qualified existence, with such powers as were necessarily incident to the winding up of its affairs, and that for some purposes it would last during the pendancy of proceedings seasonably instituted until they should be brought to an end. It is not necessary for the present purpose to define sharply what was its nature or the extent of its powers, but I think those powers were strictly limited to the necessity of its prolonged existence. For general business purposes its powers were completely exhausted.

But an inspection of Mr. Talbot's claim shows that it is for a lump sum of $16,400 for his whole service from March 31st, 1884, to the termination of the litigation, including an estimate of his charges for prospective services, the claim having been presented
167 May 28th, 1890. The time covered by this claim is divided up into periods, with a very general statement of the nature of the services performed during each, with no specific charge for any service or any period; and there is nothing in the evidence showing the value of any part of the service or furnishing the basis of an apportionment. Much of the service alleged to have been performed prior to 1890 and which he makes part of his claim was rendered to those defendants who were trying to escape the complainant's suit by obtaining from the legislature of Michigan the enactment of a law for the renewal of the corporate life of mining companies which were in the plight of the Pewabic, in their attempted reorganization under it, in the suit in *quo warranto* against the reorganization by the att'y general in the supreme court of Michigan, and upon the petition for the rehearing thereof. This

was all after the expiration of the chartered life of the company and, indeed, after those years allowed it by statutes gradually to wind up its affairs. The directors of the Pewabic Mining Co. had no authority to employ counsel at its expense to aid them in such schemes.

In his first report the master stated that all attorney fees had been paid up to the first decision of the supreme court, and it appears from that report that the books of the company kept at Houghton showed that considerable sums of money, amounting to as much as 4,500 to $5,000, had been paid from the funds of the company to the counsel who were engaged in the attempted reorganization and in the *quo warranto* suit which resulted therefrom. Whether any and what sums were paid from the treasurer's office at Boston I have no means of knowing. The suppressed books at that office might show. But as there are no means of arriving at any basis of apportionment of fees to what might upon investigation prove to be a lawful claim either by the account as presented or the evidence in support of it, it is useless to speculate upon the subject further.

Similar observations are in part applicable to the claim for professional services presented by Mr. H. J. Stevens. Among 168 the reasons assigned by the master for rejecting this claim are these: That they are without value to the Pewabic Co., were unnecessary, and were not rendered in behalf of that company, but of other individuals. In the testimony of Mr. Morse, this gentleman is spoken of as the director and general counsel for the Pewabic Co., but it turns out that he was the president of the Franklin Co.; also Mr. Stevens' claim specifies that it is for professional services rendered at various stockholders' meetings since March 16th, 1884, and other services stated in a general way. It is apparent that the stockholders' meetings referred to must have been those held in the attempt to rehabilitate the old Pewabic Co., to which previous reference has been made.

No exception has been made to the report for its allowance of the claim of Stone & Gray. The master has made an exception in this case upon the ground that they have been of assistance to him. It is a rather indirect way of compensating them, but the amount claimed is moderate, and, no exception having been taken, the allowance of it will not be disturbed. The question of the power and duty of the court in reference to a master's report where there is no exception is not considered.

Thomas H. Perkins presents a claim for $5,000 for services as president of the company since March, 1883. The master reports that they were of no value to the Pewabic Co., and that there was no contract for such compensation. Mr. Perkins states in his testimony that he had no knowledge that the company had previously paid a salary to its president. He makes a very slender showing of the actual services rendered by him. He refused obedience to the decree and order of the court for the production of the stock books before the master, and is one of the defendants responsible for protracting the suit in other interests than those of the company.

The claim of Daniel L. Demmon stands on nearly the same

grounds, though there are some objectionable features to it. For services actually rendered in good faith to the Pewabic Co.,
169 he would be entitled, I think, to compensation. It would require a more favorable showing than was made to establish the services as of that class. He asks compensation as secretary and treasurer. Special Master Maynard, appointed to take proof and report as to the value of the personal property of the Pewabic Co., in his report of May 13, 1884, states that there were then on hand items of wood and timber, mining supplies, cash, copper, and bills receivable to the value of $111,410. Special Master White in his first report states that these, together with other receipts from various sources, among them the sum of $6,178.20 from the Quincy Co. for a right of way for a railroad, have all been disposed of. No explanation has yet been given of the disposition of those assets. I do not see how, in the present situation of affairs, Mr. Demmon's claim could be allowed. There are some other considerations applicable to this claim. Mr. Demmon, being secretary and treasurer, was required by the order of the court to produce the books of the company at the Boston office. Having produced them, he was allowed to withdraw them before they could be of use upon his promise to return them. This undertaking was violated, and during the whole course of the matters — inquiry upon this branch of his duties those books which were or would be likely to be of great assistance to him were practically secreted, in violation of the duty of secretary and treasurer and in contempt of the order of the court. This person was a witness on the hearing at Boston in reference to his own claim and such other of the matters before the master as should be inquired about. At several stages in his testimony he refused to answer pertinent questions. It is unpleasant to note that he was encouraged in this, as well as in his conduct in regard to the books, by counsel for the Pewabic Co. But the witness is responsible in a large measure for what took place in regard to both matters, and it tends to characterize the nature of his services as well as to afford a presumption in evidence against the quality and amount of the services. The pretence that the inquiries of him were not pertinent is sure to be without merit when it is observed that at the
170 time he was called to the stand it was stated by the master that he might be treated as a witness for all the purposes of the reference; and it was on this latitude that he went into the subject of the Franklin Co.'s claim.

The Franklin Mining Co. presented claims aggregating $42,240.54. The master has disallowed them upon the grounds that they purport to have accrued since the expiration of the charter of the Pewabic Co., after which the latter company had no power to engage in such dealings; that the proof of the alleged loan is uncertain; that its necessity is dubious, and that it appeared that the Franklin Co. was indebted to the Pewabic Co. in a still larger amount.

Without regard now to the first of these grounds, my judgment is that the report is well founded upon the other reasons. In the first place, the proof of the alleged loan, which constitutes about

$40,500 of the claim, comes from sources that are subject to much distrust. Reference has already been made to the conduct of the witness by whom it is sought to be established, and in regard to the Pewabic Co.'s books it must be said that the entries therein are entitled to little consideration, not only because they were made by those whose objects were foreign to the company's interests, but because also they were discredited by their history and custody. The Boston office books were, as already said, once produced and upon a false promise allowed to be withdrawn. At the time when they should have been reproduced it was attempted to explain their absence by a statement that they were retained at Boston because the president was absent and the books needed his verification. This explanation was rather worse than none. The counsel making it was not at fault for this non-production, and I have no doubt he reported truly the reason assigned at headquarters, but it indicates ground for grave suspicion of the truth and authenticity of what might afterwards be produced as a copy of entries found therein.

Upon another ground also I think the master's conclusion should be sustained.

171 There is no satisfactory evidence as to what was done with the money alleged to have been loaned to the Pewabic Co. If the transaction was a *bona fide* one the treasurer should have been able to give an intelligible account of the matter. There were assets of very considerable amount in the hands of the Pewabic Co., and so far as appears quite enough to pay all legitimate debts. The treasurer's report of Jan'y 1, 1884, shows a surplus on hand over all liabilities of about $40,000. Both companies were latterly under the same management, and that was the management of the Franklin, which had its hands in the assets of the Pewabic, and the evidence tends to show it has utilized them diligently in minimizing its own expenses as well at the mine as elsewhere. Thousands of dollars were appropriated each year to the pumping of the water out of the Pewabic mine, a work which was made necessary by the operations of the Franklin Co. and wholly useless to the Pewabic.

Mr. Vivian, who remained in charge of the latter mine, was the agent also or the former. By the master's previous report it appe*ras* that it is a detriment rather than a benefit to an unworked mine to keep the water pumped out. It appears from the testimony filed with that report that the water was pumped out of the Pewabic so as to keep it from rising to a large opening between the 25th and 26th levels, from one mine into the other, and it further appears by the testimony of Mining Captain Whittle that this opening was made by the Franklin Co. in driving from their property to the Pewabic. The master finds that it received enough to more than balance accounts. The question arises as to how the matter should be dealt with. If by appearing and submitting its claim the Franklin Co. became answerable to the jurisdiction of this court, so that plenary inquiry could be made of the accounts and a decree rendered against it, then exceptions should have been alleged against this report in behalf of the Pewabic Co., but none have in fact been filed and there is no basis for the action of the court in that direction. It may be that this is the end of inquiry on that subject.

172 The claim of Charles A. Barnard and the National Bank of Houghton were properly disallowed for the reasons stated by the master.

The claims of Johnson Vivian, Arno Joenig, James H. Vivian, and Eldred Noble were severally disallowed because the claimants admitted they had been paid. As there are no exceptions taken in behalf of the Pewabic Co. in regard to the action of the master in disposing of these matters in this way, the report in respect to them will stand. Johnson Vivian is one of the defendants against whom an accounting may be had under the decree. If there is room for apprehension that the disallowance of his claim here may prevent the consideration of it on the accounting, a clause may be inserted in the order now to be entered that it is without prejudice to the consideration of it on any accounting which may hereafter be had. But as it is admitted to have been paid the claim ought not on this branch of the reference to be allowed.

The objection that the master failed to notify counsel of the time and place of settling his report was waived at the hearing and is therefore not considered.

The conclusion is that the several exceptions to the master's report should be overruled and that it should be confirmed.

Several of the counsel for the defence, whose claims the master disallowed, have filed petitions for allowances out of the fund arising from the sale for the same services. As I agree with the master in most of the reasons stated by him for refusing to allow the claims, I shall for the same reason disallow those several petitions and orders will be entered accordingly. The question of any authority to allow them at this stage of the case is referred to under another head.

The other matter which remains to be disposed of is the petition for an allowance out of the fund in favor of the solicitors for the complainants upon the footing of what are known as costs between solicitors and clients.

173 A preliminary question arises in regard to the power of the court proceeding, as it is under the mandate of the supreme court, which contains the order of that court in regard to costs. This was to the effect that the complainants should recover their costs in the circuit as well as in the supreme court. These, of course, must be understood to be the usual taxable costs.

It would seem clear that this court has no authority to supplement that order by awarding a sum, to be determined by its discretion, as costs to be taxed as between party and party, but which are really an indemnity for the expense of carrying on the suit against a perverse and unreasonable defence, as was done in Perrin *vs.* Leppin, 72 Mich., 557, and McIntosh *vs.* The Flint and P. M. R. R. Co., a case reported in 34 Fed. Rep., 582 (though not on this point, which latter appears from the record), cited in support of this petition.

This court is not now proceeding upon its original authority in regard to any matters which were or might have been dealt with by the supreme court on the appeal from the original decree. The subject of costs was included in the mandate, which we are now executing.

Perjins *vs.* Fourniqust, 14 How., 328.
In re Washington & Georgetown R. R. Co., 140 U. S., 91.
Gains *vs.* Rugg, 148 U. S, 228, 239.

There is some analogy, though it is not complete, between the equity for such costs and costs between solicitor and client, which are paid out of a fund in court. I have some doubt whether this court retains the power to award the latter species of costs; but I express no opinion upon this question, as it seems to me clear that this is not a case in which they could properly be allowed. It must be admitted that the case is one of hardship to the complainants in respect to the heavy expenses which must have been incident to the contest, but that is the condition of a great many litigants, who find in the end that the fruits of their efforts are not worth the expenses of reaching them. The law has fixed by definite measures the costs which may be recovered by the successful party. Courts of equity have in rare instance, by a practice which has been confessed to be
"dangerously arbitrary," added a further sum to be taxed
174 when there has been gross injustice or vexatious litigation,
productive of unreasonable expenses.

The costs of hiring counsel in the case have also sometimes been allowed out of a fund or saved for a large number by the efforts of a part of those entitled to share in it. In such cases there is a very tangible equity in charging upon those who come in to share the fruits their proper share of the expenses of saving them. But even in such cases the levy for indemnity has been limited to the payment of counsel and has not been extended to the personal services and expenses of the party, however extensive and burdensome they may have been.

The principle which lies at the foundation of this practice is that of imposing the burden of the charges of the suit upon those who come in and share the benefits of it. The doctrine of this subject was fully discussed and the reason on which it rests stated it Trustees *vs.* Grennough, 105 U. S., 527, and Central R. R. Co. *vs.* Petter, 113 U. S., 116. That principle is not applicable to the case of antagonistic parties who have been contending against each other for the right to deal with their own property in the way which they deemed most advantageous for their interests. There was nothing illegal in the sense that it was contrary to public policy in the course proposed by the majority of the stockholders—that is, in turning over the assets of the expired corporation to a new one organized by the old stockholders and in which all of them could join or from which some might stay out and have their interest in the old corporation paid in cash; and if the dissenting minority had concurred the transfer would have been valid. What was adjudged was that the minority could not be compelled to do what the majority proposed. There has been no saving of the fund, and it is not shown that any advantage has accrued to the majority from the suit. If the course they desired had been pursued, it may be, for aught the court can see, the stockholders of the Pewabic Mining Co. would have preserved that property, and the same developments would have taken place which have enhanced the market value of it.

175 The fact manifestly is that the growth of its developed value and the large sum which the mine brought at the sale are due not to anything intrinsic to the suit, but to the supervening accidents occurring from the law's delay.

The majority of the stockholders have not taken advantage of the complainants' suit, and deny that it has been of any benefit to them. They will receive what they are compelled by the court to accept or leave it unclaimed, but in no event is that portion of the fund available to any one else.

My conclusion is that the petition for an allowance out of the fund for the services of the complainants' counsel must be disallowed. An order will be entered accordingly.

Thus, upon all the aspects of the case, I am convinced that the proper thing for the court to do in respect of all these claims for fees of counsel is to remit them to the respective parties in whose actual employment they were incurred.

H. F. SEVERENS,
Dist. Judge.

July 14, 1893.

(Endorsed:) (No. 46.) The circuit court of the U. S. for the sixty circuit, western district of Mich., northern division. Thomas H. Mason *et als. vs.* Pewabic Mining Company *et als.* Opinion on special master's second report. Filed July 14, '93. F. M. Moore, dep. clerk.

176 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, THOMAS H. Perkins, Henry Billings, Alden D. Butterick, Daniel L. Demmon, and The Pewabic Copper Company.

In the matter of the petition of Don M. Dickinson and Alfred Russell for an allowance of counsel fees out of the fund in court.

To the judge of said court:

The above named complainants and Don M. Dickinson and Alfred Russell, counsel for complainants, having claimed an appeal to the Supreme Court of the United States from an order made by said circuit court on the fourteenth day of July, A. D. 1893, denying the petition of said Don M. Dickinson and Alfred Russell, heretofore filed in this cause in said circuit court, for an allowance of counsel fees out of the fund in court, application is hereby made for an order allowing said appeal, determining the penal sum of the bond to be given on said appeal, and that said appeal may operate as a supersedeas.

THOMAS H. MASON,
WILLIAM HART SMITH,
SULLIVAN BALLOU,
By DICKINSON, THURBER & STEVENSON,
Their Solicitors.
ALFRED RUSSELL.
DON M. DICKINSON.

August 20, A. D. 1893.

The foregoing claim of appeal is hereby allowed this 4th day of September, A. D. 1893.

H. F. SEVERENS,
Dist. Judge.

177 (Endorsed:) No. 46. Allowed Sept. 4, '93. Application for allowance and for fixing bond. Application for order allowing appeal. Filed Sept. 13th, 1893. F. M. Moore, dep. clerk.

178 Know all men by these presents that we, Thomas H. Mason, William Hart Smith, and Sullivan Ballou, all of the city of New York, in the State of New York, and Alfred Russell and Don M. Dickinson, both of the city of Detroit, in the State of Michigan, as principals, and Walter J. Gould and William A. Moore, both of Detroit, Mich., as sureties, are held and firmly bound unto the Pewabic Mining Company, Johnson Vivian, Thomas H. Perkins, Daniel L. Demmon, and the Pewabic Copper Company, who are the survivors of themselves and Henry Biilings and Alden B. Butterick, deceased, in the sum of nine thousand dollars ($9,000.00), to be paid to the said Pewabic Mining Company, Johnson Vivian, Thomas H. Perkins, Daniel L. Demmon, and the Pewabic Copper Company, their certain successors, attorney, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 4th day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Whereas lately, at a term of the circuit court of the United States for the western district of Michigan, northern division, in a suit in equity depending in said court between said Mason, Smith, and Ballou, as complainants, and The Pewabic Mining Company, Johnson Vivian, Thomas H. Perkins, Daniel L. Demmon, and The Pewabic Copper Company, as survivors of themselves and the said Henry Billings and Alden B. Butterick, deceased, a certain petition of Don M. Dickinson and Alfred Russell, both of the city of Detroit, State of Michigan, and both of whom were and are counsel for the complainants in the said suit depending in equity, was filed in and presented to the said circuit court in equity, praying that certain counsel fees should be decreed, awarded, and paid by the said circuit court to the said Don M. Dickinson and Alfred Russell for professional services rendered in said cause, the said fees to be paid out of the fund in court, and which said petition was denied and 179 the said petition dismissed by final and decretal order of the said circuit court in equity made in said cause on the 14th day of July, A. D. 1893, from which said order the said complainants and said Alfred Russell and Don M. Dickinson have heretofore, on the 28th day of August, A. D. 1893, claimed and taken their appeal to the Supreme Court of the United States to reverse said order in said suit, which said appeal has been duly allowed by the Honorable Henry F. Severens, United States district judge for the western district of Michigan, northern division, sitting in equity in said cause, and a citation directed to the aforesaid surviving defendants and Thomas H. Talbot, J. Lewis Stackpole, Robert M. Morse, Russell C. Ostrander, F. A. Baker, and Charles E. Hillier, parties in interest in said cause, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the fourth day of October, A. D. 1893, having been issued on said appeal:

Now, the condition of the above obligation is such that if said appellants shall prosecute their appeal to effect and answer all costs of suit and just damages for delay and costs and interest on appeal if they fail to make their appeal good, and shall in all other respects comply with such order as shall be made in the premises by the Supreme Court of the United States, then the above obligation to be null and void; otherwise to remain in full force and virtue.

THOMAS H. MASON,
By ALFRED RUSSELL,
His Att'y-in-fact, and
DON M. DICKINSON,
His Att'y-in-fact. [SEAL.]
WM. HART SMITH. [L. S.]
By ALFRED RUSSELL,
His Att'y-in-fact, & [SEAL.]
By DON M. DICKINSON,
His Att'y-in-fact.
SULLIVAN BALLOU,
By ALFRED RUSSELL,
His Att'y-in-fact, & [SEAL.]
By DON M. DICKINSON,
His Att'y-in-fact.
180 ALFRED RUSSELL. [SEAL.]
DON M. DICKINSON. [SEAL.]
WALTER J. GOULD. [SEAL.]
WM. A. MOORE. [L. S.]

Signed, sealed, and delivered in presence of—

WILSON H. GRAY.
JAMES H. CULLEN.

Bond and sureties approved this 4th day of September, A. D. 1893, and it is ordered that the said appeal be, and the same is hereby, allowed, and that this bond operate as a supersedeas, and, further, that this bond and the application made for allowance of said appeal be transmitted to the clerk of the circuit court of the United States for the western district of Michigan, northern division.

H. F. SEVERENS,
District Judge, Western District of Michigan.

(Endorsed:) No. 41. Bond. Appeal as supersedeas. U. S. circuit court, west. dist. of Mich, nor. div. In equity. Original. Thomas H. Mason *et als. vs.* Pewabic Mining Co. Bond on appeal of Don M. Dickinson and Alfred Russell. Filed Sept. 13th, 1893. F. M. Moore, dep. clerk. Dickinson, Thurber & Stevenson, for —.

181 To the Pewabic Mining Company, Johnson Vivian, Thomas H. Perkins, Daniel L. Demmon, the Pewabic Copper Company, Thomas H. Talbot, of Boston, Mass.; J. Lewis Stackpole, of Boston, Mass.; Robert M. Morse, of Boston, Mass.; Russell C. Ostrander, of Lansing, Michigan; F. A. Baker, of Detroit, Michigan, and Charles E. Hillier, of Boston, Mass., Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the fourth day of October A. D. 1893, pursuant to an appeal claimed and allowed by the circuit court of the United States for the western district of Michigan, northern division thereof, in a cause in equity wherein Thomas H. Mason, William Hart Smith, and Sullivan Ballou are complainants and The Pewabic Mining Company, Johnson Vivian, Thomas H. Perkins, Daniel L. Demmon, The Pewabic Copper Company, and others are defendants, and the said complainants and Don M. Dickinson and Alfred Russell are appellants, from an order made by the said circuit court on the fourteenth day of July, A. D. 1893, denying the prayer of the petition of said Don M. Dickinson and Alfred Russell, heretofore filed in said cause, for an allowance of *cuo*nsel fees in said cause to said Don M. Dickinson and Alfred Russell out of the fund in court, to show cause, if any there be, why the said order denying the prayer of said petition should not be reversed and why speedy justice should not be done to the parties in that behalf.

Dated this 4th day of September, A. D. 1893.

H. F. SEVERENS,
Dist. Judge.

(Endorsed:) U. S. circuit court, W. D. Mich., N. D. In eq. Thomas H. Mason *et al. vs.* The Pewabic Mining Co. *et al.* Original citation signed by Judge Severens 4 Sept., '93, on appeal of the complainants & Don M. Dickinson & Alfred Russell to the S. C. U. S. Filed Sept. 18, 1893. F. M. Moore, dep. clerk.

182 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

EASTERN DISTRICT OF MICHIGAN, *ss:*

James Dougall, being duly sworn, saith that on the 18th day of September, A. D. 1893, at Detroit, in said eastern district of Michigan, he served on Fred. A. Baker, appellee, a copy of the citation duly signed and filed in this cause with the clerk of the circuit court in and for the western district of Michigan, northern division, on the appeal of said complainant and Don M. Dickinson and Alfred Russell, by delivering such copy of the citation personally to said Baker. This deponent further says that annexed hereto is a true copy of said citation served by him as aforesaid, together with a copy of a notice thereon endorsed, a copy of which notice is hereto subjoined.

JAMES DOUGALL.

Subscribed and sworn to this 18th day of September, A. D. 1893, before me—

EDWARD A. GOTT,
Notary Public, Wayne County, Michigan.

To the above-named appellee:

Please take notice that the foregoing is a copy of the citation duly signed and filed in said cause with the clerk of the circuit court of the United States for the western district of Michigan, northern division, in equity, and that a supersedeas bond in $9,000 has been approved and filed.

Dated Detroit, Sept. 4th, 1893.

DICKINSON, THURBER & STEVENSON,
Solicitors for Appellants.

183 Endorsed: 46. U. S. circuit court, W. D. Mich., N. D. In eq. Thos. H. Mason *et al.* *v.* The Pewabic M. Co. *et al.* Proof of service of citation on appeal of complainants — Dickinson and Russell upon Fred. A. Baker, an appellee. Filed Sept. 19th, 1893. F. M. Moore, dep. clerk.

184 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY Billings, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Edward Cahill, being duly sworn, saith that on the 18th day of September, A. D. 1893, at Lansing, in said eastern district of Michigan, he served *on* Russell C. Ostrander, appellee, a copy of the citation duly signed and filed in this cause with the clerk of the circuit court in and for the western district of Michigan, northern division, on the appeal of said complainant and Don M. Dickinson and Alfred Russell, by delivering such copy of the citation personally to said Russell C. Ostrander. This deponent further says that annexed hereto is a true copy of said citation served by him as aforesaid, together with a copy of a notice thereon endorsed, a copy of which notice is hereto subjoined.

EDWARD CAHILL.

Subscribed and sworn to this 18th day of September, A. D. 1893, before me—

CHAS. P. LOCK,
Notary Public, Ingham Co., Mich.

To the above-named appellee:

Please take notice that the foregoing is a copy of the citation duly signed and filed in said cause with the clerk of the circuit court of the United States for the western district of Michigan, northern division, in equity, and that a supersedeas bond in $9,000 has been approved and filed.

Dated Detroit, Sept. 4th, 1893.

DICKINSON, THURBER & STEVENSON,
Solicitors for Appellants.

185 (Endorsed:) No. 46. U. S. circuit court, W. D. Mich., N. D. In eq. Thos. H. Mason *et al. v.* The Pewabic M. Co. *et al.* Proof of service of citation on appeal of compl'ts — Dickinson & Russell upon Russell C. Ostrander. Filed Sept. 22, 1893. F. M. Moore, dep. clerk.

186 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. I- Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY Billings, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

COMMONWEALTH OF MASSACHUSETTS, } *ss:*
District of Maschusetts, Suffolk, }

BOSTON, 19 *September*, 1893.

Henry S. Dewey, being duly sworn, saith that on the 19th day of September, A. D. 1893, at Boston, in said district of Massachusetts, he served on Thomas H. Perkins, Thomas H. Talbot, J. Lewis Stockpole, Robert M. Morse, Charles E. Hellier, Daniel L. Demmon, The Pewabic Mining Company, and The Pewabic Copper Company, respectively, appellees, a copy of the citation duly signed and filed in this cause with the clerk of the circuit court in and for the western district of Michigan, northern division, on the appeal of said complainants and Don M. Dickinson and Alfred Russell, by delivering such copy of the citation personally to each one of said persons, and also a copy to said Demmon as a director of said Pewabic Mining Company and a copy to him as a director of said Pewabic Copper Company. This deponent further says that annexed hereto is a true copy of said citation served by him as aforesaid, together with a copy of a notice thereon endorsed, a copy of which notice is hereto subjoined.

HENRY S. DEWEY.

Subscribed and sworn to this 19th day of September, A. D. 1893, before me—

I. R. CLARK,
Notary Public. [SEAL.]

187 To the above-named appellees:

Please take notice that the foregoing *as* a copy of the citation duly signed and filed in said cause with the clerk of the circuit court of the United States for the western district of Michigan, northern division, in equity, and that a supersedeas bond in $9,000 has been approved and filed.

Dated Detroit, Sept. 4th, 1893.

DICKINSON, THURBER & STEVENSON,
Solicitors for Appellants.

(Endorsed:) No. 46. U. S. circuit court, W. D. Mich., N. D. In eq. Thos. H. Mason *et al. v.* Pewabic Mining Co. *et al.* Proof of service of citation on appeal of complainants & Dickinson & Russell to S. C. U. S. upon Daniel L. Demmon, Pewabic M. Co., Thos. H.

Perkins, Pewabic Copper Company, Thos. H. Talbot, J. Lewis Stackpole, *Bob't* M. Morse, Chas. E. Hellier. Filed Sept. 22, 1893. F. M. Moore, dep. clerk.

188 UNITED STATES OF AMERICA,
Western District of Michigan, Northern Division, } *ss:*

I, Francis M. Moore, deputy clerk of the circuit court of the United States for the sixth circuit and western district of Michigan, northern division, do hereby certify the above and foregoing to be true and correct copies of certain of the files and records now on file and of record in my office in the cause therein entitled, to wit:

1. The original bill of complaint.
2. The original answer of defendants.
3. The original decree.
4. Mandate of U. S. Supreme Court on original appeal.
5. Order of sale under said mandate.
6. Special master's report of said sale.
7. Petition of Alfred A. Marcus to open said sale.
8. Order denying said petition of Marcus.
9. Appeal of said Marcus from said order.
10. Mandate of supreme court affirming said order on appeal of said Marcus.
11. Petition of Don M. Dickinson and Alfred Russell for an allowance of counsel fees out of the fund in court except exhibits.
12. Two answers of Pewabic Mining Company to said petition of Dickinson and Russell.
13. Special master's report, disallowing certain claims for counsel fees to be paid out of the fund in court.
14. Order denying allowance to said Dickinson and Russell out of the fund in court.
15. Finding or opinion of court on disallowing petition of Dickinson and Russell for allowance of counsel fees out of the fund in court.
16. Application of Dickinson and Russell for appeal from order denying petition for an allowance of counsel fees, etc.

189 17. Allowance of said appeal.
18. Bond on appeal.
19. Citation and proof of service of copy of same on defendants.

That I have compared the same with the originals thereof now remaining of record and on file in my said office; that they are true and correct copies thereof and of the whole thereof.

In witness whereof I have hereunto set my hand and the official seal of said court, at the city of Marquette, in said district and division, this thirtieth day of September, A. D. one thousand eight hundred and ninety-three.

{ Seal of the U. S. Circuit Court, Western District of Mich., Northern Division. }

FRANCIS M. MOORE,
Deputy Clerk.

190 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THOMAS H. MASON, WILLIAM HART SMITH, and SULLIVAN BALLOU, Complainants,
vs.
THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, HENRY BILLINGS, Thomas H. Perkins, Alden B. Butterick, Daniel L. Demmon, and The Pewabic Copper Company, Defendants.

WESTERN DISTRICT OF MICHIGAN, *Northern Division*, } *ss:*

Charles D. Hanchette, being duly sworn, says that on the 4th day of October, A. D. 1893, at Houghton, in said western district of Michigan, he served on Johnson Vivian, appellee, a copy of the citation duly signed and filed in this case with the clerk of the circuit court in and for the western district of Michigan, northern division, on the appeal of said complainants and Don M. Dickinson and Alfred Russell, by delivering such copy of the citation personally to Johnson Vivian. This deponent further says that annexed hereto is a true copy of said citation served by him as aforesaid, together with a copy of a notice thereon endorsed, a copy of which notice is hereto subjoined.

CHARLES D. HANCHETTE.

Subscribed and sworn to before me this 4th day of October, A. D. 1893.

MAURICE E. WRIGHT,
Notary Public in and for Houghton County, Michigan.

To the above-named appellee:

Please take notice that the foregoing is a copy of the citation duly signed and filed in this cause with the clerk of the circuit court of the United States for the western district of Michigan, northern division, in equity, and that a supercedeas bond in $9,000 has been approved and filed.

Dated Detroit, Sept. 4th, 1893.

DICKINSON, THURBER & STEVENSON,
Solicitors for Appellants.

191 To the Pewabic Mining Company, Johnson Vivian, Thomas H. Perkins, Daniel L. Demmon, the Pewabic Copper Company, Thomas H. Talbot, of Boston, Mass.; J. Lewis Stackpole, of Boston, Mass.; Robert M. Morse, of Boston, Mass.; Russell C. Ostrander, of Lansing, Michigan; F. A. Baker, of Detroit, Michigan, and Charles E. Hellier, of Boston, Mass., Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington on the fourth day of October, A. D. 1893, pursuant to an appeal claimed and allowed by the circuit court of the United States for the western district of Michigan, northern division thereof, in a cause in equity, wherein Thomas H. Mason, William Hart Smith, and Sullivan Ballou are complainants and The Pewabic Mining Company, Johnson Vivian, Thomas H. Perkins, Daniel L. Demmon, The Pewabic Copper Company, and others are defendants and the said complainants and Don M. Dickinson and Alfred Russell are appellants, from an order made by the said circuit court on the fourteenth day of July, A. D. 1893, denying the prayer of the petition of said Don M. Dickinson and Alfred Russell, heretofore filed in said cause, for an allowance of counsel fees in said cause to said Don M. Dickinson and Alfred Russell out of the fund in court, to show cause, if any there be, why the said order denying the prayer of said petition should not be reversed and why speedy justice should not be done to the parties in that behalf.

Dated this fourth day of September, A. D. 1893.

(Signed) H. F. SEVERENS,
Dis. Judge.

(Endorsed:) No. 46. U. S. circuit court, W. D. Mich., N. D. In eq. Thos. H. Mason *et al.* *v.* Pewabic Co. *et al.* Proof of service of citation on appeal of complainants and Dickinson and Russell upon Johnson Vivian. Filed Oct. 7th, 1893. F. M. Moore, dep. clerk.

192 UNITED STATES OF AMERICA,
Western District of Michigan, Northern Division, } *ss:*

I, Francis M. Moore, deputy clerk of the circuit court of the United States for the sixth circuit and western district of Michigan, northern division, do hereby certify the annexed and foregoing to be a true and correct copy of the citation and proof of service of same on Johnson Vivian, one of said defendants, now on file in this court in the cause therein entitled; that I have compared the same with the original citation and proof of service on file and now remaining on file in my office; that it is a true and correct copy thereof and of the whole thereof.

Seal of the U. S. Circuit Court, Western District of Mich., Northern Division.

In witness whereof I have hereunto set my hand and the official seal of said court, at the city of Marquette, in said district and division, this 16th day of October, A. D. one thousand eight hundred and ninety-three.

FRANCIS M. MOORE,
Deputy Clerk.

193 [Endorsed:] Case No. 15,425. Supreme Court U. S., October term, 189–. Term No., 1041. Thomas H. Mason *et al.*, app'ts, *vs.* The Pewabic Mining Co. *et al.* Certified copy of citation & proof of service.

[Stamped:] Office Supreme Court U. S. Filed Oct. 20, 1893. James H. McKenney, clerk.

Endorsed on cover: Case No. 15,425. W Michigan C. C. U. S. Term No., 1041. Thomas H. Mason, William Hart Smith, Sullivan Ballou, Don M. Dickinson, and Alfred Russell, appellants, *vs.* The Pewabic Mining Company, Johnson Vivian, Thomas H. Perkins, *et al.* Filed October 14th, 1893.

Supreme Court of the United States.

No. 1041. — October Term, 189

Office Supreme Court U. S.
FILED.
FEB 16 1894
JAMES H. McKENNEY,
CLERK.

THOMAS H. MASON et al., Appellants,

vs.

THE PEWABIC MINING COMPANY et als. Appellees.

Motion of the Appellees to dismiss the Above-entitled Appeal for want of Jurisdiction.

And now come the appellees and move the Court to dismiss the above-entitled appeal, because, as said appellees say, this honorable Court has no authority of law to hear and determine the same.

And these appellees rest this their motion upon the following grounds: —

This appeal is from a decree or order of the Circuit Court for the Western District of Michigan, Northern Division, and was, as appears by the record, taken August 20, 1893 (p. 113).

And it is from a decree or order of said Court, made in a certain cause therein pending, upon a petition of the appellants, Dickinson & Russell, that out of a fund arising from the sale of the property of the defendant, Pewabic Mining Company, under a decree for winding up its affairs, made in this same cause, an allowance may be decreed to them for services as counsel in this same cause and in procuring said decree.

Accordingly, said appellees say that said appeal was not taken on or before July 1, 1891; and that this appealed case is not in any of the classes of cases in which the laws of the United States, as they existed on said August 20, 1893, or have existed at any time since, allowed an appeal to be taken to this honorable Court.

Act of March 3, 1891, ch. 517, sect. 5, vol. 26, p. 826.
National Exchange Bank *vs.* Peters, 144 U.S. 570.

By their solicitor,

THOMAS H. TALBOT.

Office Supreme Court U. S
FILED.
FEB 24 1894
JAMES H. McKENNEY,
CLERK

153-361

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

Thomas H. Mason, William Hart Smith, Sullivan Ballou, Don M. Dickinson and Alfred Russell,
Appellants,
vs.
The Pewabic Mining Company, Johnson Vivian, Thomas H. Perkins, *et al.*

No. 1041.

Appeal from the C. C., U. S., W. D., Mich.

BRIEF

For appellants, both on the *merits* (the case having been advanced and set for March 5, 1894) and *also* on the motion by appellees to *dismiss* for want of jurisdiction.

Don M. Dickinson,
Alfred Russell,
Of Counsel.

DETROIT:
John F. Eby & Co., Printers.
1894.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

THOMAS H. MASON, WILLIAM HART SMITH, SULLIVAN BOLTON, DON M. DICKINSON and ALFRED RUSSELL, *Appellants,* vs. THE PEWABIC MINING COMPANY, JOHNSON VIVIAN, THOMAS H. PERKINS, *et al.*	*No. 1041.*

Appeal from the C. C., U. S., W. D., Mich.

BRIEF

For appellants, both on the *merits* (the case having been advanced and set for March 5, 1894) and *also* on the motion by appellees to *dismiss* for want of jurisdiction.

DON M. DICKINSON,
ALFRED RUSSELL,
Of Counsel.

I.

STATEMENT.

1. The bill in this cause (Rec., p. 1) was filed March 31, 1884 (ten years ago). The complainants were less than one-sixteenth of the stockholders of the Pewabic Mining Company. The defendants were the corporation itself, all the directors, and a new corporation called the Pewabic Copper Company, fraudulently formed by three of the directors for the purpose of acquiring the property of the mining company for the sum of $50,000, greatly less than its value. The corporation had expired, and the property was then worth at least $500,000, and the complainants protested against the sacrifice of the property, and claimed the right to have the property converted into money by auction sale.

2. After a long and expensive litigation, a final decree in favor of the complainants was granted by Mr. Justice Matthews, at circuit (Rec., p. 48).

The contention of the defendants as to low value found sufficient lodgment in the mind of the court to lead to the fixing of a condition in the decree directing a sale only in the event a sum should be bid exceeding $50,000, and the amount of indebtedness (Rec., p. 48).

3. The cause was brought into this court by both parties, the complainants appealing because the lower court refused a personal accounting against the misbehaving directors. This court affirmed the decree, except on the last named point, on which the court held with the complainants, who *thus prevailed on the whole case.*

Mason vs. Pewabic Mining Co., 133 U. S., 50.

4. The case was decided here January 13, 1890, and the mandate having been sent down, the lower court rendered a decree

May 6, 1890 (Rec., p. 54), upon the mandate, ordering a reference, report, and sale at auction. And, February 3, 1891, the special master filed his report of sale for the sum of $710,000 (*seven hundred and ten thousand dollars*), also setting forth in his report the endeavors of one *Alfred A. Marcus*, to interfere with the sale.

5. March 3, 1891, being prompted by defendants and their counsel, Marcus filed his intervening petition to set aside the sale, showing that the sale took place on the 7th day of the week, *his Sabbath, on which day his creed forbade him to do business*, and offering to pay $721,000.

The court below denied the petition of *Marcus*, April 27, 1891 (Rec., p. 75), *and Marcus afterwards, and on June 12, 1891* (Rec., p. 76), *took his appeal to this court, and not to the new Court of Appeals*, although the act creating the Court of Appeals, went into effect March 3, 1891, more than three months previously.

See the act, found conveniently in 138 U. S., 709.

The *same counsel*, Mr. Talbot, Mr. Ostrander and the others who now appear in this appeal, appeared for Marcus, and on his appeal in this court. Section 6 of the above act declared that in all cases, other than those enumerated in section 5, the appeal should be to the Court of Appeals, "*unless otherwise provided by law.*" The undersigned took the same view then which they take now in the case at bar (and the same view which counsel, now opposing, *then* took); *that this Court, having become once possessed of the case, continued to be possessed of it, in all its phases, until its termination, according to the principles and rules of Courts of Equity in such cases*, so that it *was* "*provided by law*" that the appeal of Marcus should be to this court; the "law" being the equity practice.

6. This court took and exercised jurisdiction of the appeal of *Marcus*, on his intervening petition, and affirmed the decree of the court below (Rec., p. 78).

Marcus vs. Mason, 145 U. S, 349.

7. February 28, 1893, Mr. Dickinson and Mr. Russell filed their petition in this cause, in the court below, praying for an allowance to them, as counsel for the complainants, out of the amount of the fund of $710,000 going to the holders of fifteen-sixteenths of the stock of the Pewabic Mining Company who were not complainants, and that such allowance should be ten per cent, and that it should be made a lien on that part of the fund. (Rec., p. 78 to p. 85.)

An answer to the petition was filed (Rec., p. 87) and the petition was denied July 3, 1893, by District Judge SEVERENS' *opinion*. (Rec., p. 110.) All the counsel for the respondents filed with the special master White, claims for compensation for their *obstructive* efforts, including *Mr. Talbot*, $16,400; also the *officers* of the company filed claims. The special master denied these claims (Rec., p. 95), and his finding was affirmed.

II.

MOTION TO DISMISS.

This is based or the alleged ground that the appeal should have been taken to the Court of Appeals.

The question presented is, whether the act of March 3d, 1891, creating the Court of Appeals, stands in the way of the present appeal. This act is conveniently found in

138 U. S., 709.

This involves the effect of the *proviso* in sec. 6 of that act.

Sec. 6 declares that in *all cases other* than those enumerated in sec. 5 (and this is not enumerated), the appeal shall be to the new court, "UNLESS OTHERWISE PROVIDED BY LAW."

We submit this case falls within the last named *proviso*, precisely as the *Marcus* appeal (taken three months after the new act) did. Nobody suggested that that appeal should have been to the new court; yet every reason put forward why the present appeal should be to the new court, would apply to the appeal of *Marcus.*

Marcus vs. Mason, 145 U. S., 349.

The Court of Appeals act of March 3d, 1891, went into *immediate operation* three months before the Marcus appeal. As to its immediate effect, *see,*

Re Claasen, 140 U. S., 204 (*near bottom*).
McLish vs. Roff, 141 U. S., 664.

So that if counsel, now moving dismissal, is right, there was no jurisdiction here in the *Marcus* appeal.

1. The present case concerns the distribution of a fund created under the mandate of the Supreme Court, and (in the view of the court below) involves the construction of the language of the mandate of this court as to costs.

See Opinion, Record, p. 111, *top*.

Surely it is not for the Court of Appeals to give a construction and final operation to the mandate of the Supreme Court.

Perkins vs. Fourniquet, 14 How., 328.

2. Moreover, by the joint resolution of March 3, 1891, the jurisdiction of the Supreme Court is not impaired where an appeal was taken prior to the act concerning appeals.

See Resolution in 138 U. S., p. 715.

It may well be held that the original appeal in the Pewabic case vested this court with all future jurisdiction in the case, within the meaning of that resolution.

3. This case concerns *the administration of a fund in court,* and this court having itself created that fund by its mandate before the Court of Appeals statute was enacted, and being engaged in the exercise of such administration when that statute was enacted, it is the "*law*" that this court will *dispose of that fund,* and that no other court can. The framer of the Court of Appeals act saw that there would be cases like this, and inserted

the *proviso* above referred to. Analogies of the application of the principle invoked may be seen in

French, Trustee, vs. Hay, 22 Wall., 250.
Hudson vs. Superior Court, 42 Mich., 239.
Dietzsch vs. Huidekoper, 103 U. S., 494.

In *French vs. Hay*, MR. J. SWAYNE said: "*Having possession and jurisdiction of the case, that jurisdiction embraced everything in the case, and every question arising which could be determined in it until it reached its termination, and the jurisdiction was exhausted.*"

This unquestionable doctrine applies just as much to the vesting of superior supervisory jurisdiction as it does to original jurisdiction, and cases arising under this doctrine are *excepted out* of the operation of sec. 6 of the Court of Appeals act by the *proviso* at the end of the section. It was not the intention of Congress that the creation and administration of a fund should be reviewed *piecemeal.*

4. "*Provided by law*" (in sec. 6 above) does not mean provided by *statute* law only. It means, also, provided by the course and practice of courts.

See the analogy of the opinion in Neagle's case (involving the protection of the person of a federal judge).

Re Neagle, 135 U. S., 1–59.

Once in the Supreme Court, always in the Supreme Court.

III.

MERITS AND ASSIGNMENT OF ERRORS.

We assign for error the denial of the prayer of the petition for an allowance to the counsel for complainants.

The performance of the services appeared of record, and was not denied by opposing counsel, and was admitted by the court, but the court ruled that this was not the sort of case in which an allowance can be made.

1. This was a bill filed on behalf of the complainants and all others interested, to prevent a fraudulent sale and for the administration by the court of the property of the Pewabic Mining Company (an expired corporation), for the benefit of all concerned. The complainants were three stockholders, out of many hundreds, and held a very small part of the stock (about one-sixteenth), and they have conducted the litigation, for ten years past, at their own expense, and have been up to this court and back twice, and the property has been sold under the mandate of this court for $710,000. The solicitors for the complainants filed a petition (Rec., p. 78 to 85) setting forth their services fully, and praying for an allowance of ten per cent. According to the cases, this is the proper practice, and the court may act itself, or refer the matter to a master, although there was no need of the latter course, as the services appeared of record and the court was familiar with them. This was so held by Associate Justice LAMAR and Circuit Judge PARDEE in

Eaton vs. Houston Ry Co., 40 F. R., 191, *top.*

Some of the cases are collected in Foster's Federal Practice, 2d Edition, pp. 644–645.

2. The general principle is laid down in *Hobbs vs. McLean*, 117 U. S., 582, *top* (1885). "Where many persons have a common interest in a trust property, or fund, and one of them, for the

benefit of all, and at his own costs and expense, brings a suit for its preservation or administration, the court of equity in which the suit is brought, will order that the plaintiff be reimbursed his outlay from the property of the trust, or by proportional contribution from those who accept the benefit of his efforts."

In the equity case of *Perrin vs. Lepper*, 72 Mich., 557, a counsel fee, pure and simple, of $20,000, was allowed, upon a recovery of $426,000, being about five per cent, and the allowance was to two counsel.

In *Mackintosh vs. The Flint & Pere Marquette R. R. Co.*, U. S. Circuit Court, Detroit, May 26, 1888, reported in 34 F. R., 582, by clause 11 of the decree the defendant company was ordered to pay $50,000 to the complainants for their legal and other expenses of litigation. Mr. Russell was one of the counsel. Mr. Circuit Judge JACKSON made the order.

In *Trustees vs. Greenough*, 105 U. S., 535, BRADLEY, J. (1881), the case was this: Mr. Vose filed a bill for himself and other bondholders, for a receiver of a land grant of the Florida railroad. He advanced the expenses, and the litigation was successful. He filed a petition setting forth his services and advances, and asking an allowance out of the fund, and was allowed $60,131.96, and an appeal was had to this court, and it was here said that where a court of equity administers funds, it may properly make an allowance to counsel out of the funds.

See also *Ex parte Plitt*, 2 Wallace, Jr., 453.

In *Adams vs. Kellor Co.*, 38 F. R., 281, it was said by Judge THAYER, where there was an application for an allowance, and no reference to a master, that all persons interested must contribute ratably, and *ten per cent* was allowed.

In *Central Railroad vs. Pettus*, 113 U. S., 116, certain unsecured creditors of a railroad company filed a bill for themselves, *and all others*, to establish a lien upon the property of that company in the hands of third persons, and the suit was successful. The solicitors filed a petition for allowance *in respect of other persons interested, not being their clients*, and *to estab-*

lish a lien upon the property, recovered for those others. On p. 124, bottom, Mr. J. HARLAN said that where an allowance to the complainants on account of solicitors' fees is proper, it may be made *directly to the solicitors themselves*, without any application by their immediate clients (p. 127). Those who receive the fruit of the labor of solicitors, must pay them, although the immediate client who employ the solicitors may have paid them. The court below allowed *ten per cent.* This court reduced the allowance to *five per cent;* but *solely upon the ground that the solicitors had agreed with their immediate clients for five per cent of their recovery, and that no more should be charged against the others.*

See also Exparte Jaffray, Re Waite and Crocker, 1 Lowell, 321.

In ***Easton vs. Houston Ry. Co.***, 40 Fed. Rep., 189, *a case nothing like as meritorious as the present*, the sum of $100,000 was allowed to the solicitors for the trustees foreclosing (Mr. Justice LAMAR and Circuit Judge PARDEE).

3. The allowance may be out of the entire fund for the counsel and clients of the counsel; or it may be out of that portion of the fund going to others than the clients of the counsel, and for the counsel alone, leaving the clients of the counsel without reimbursement for what they have advanced.

The present application was for counsel only, the allowance to be made a lien upon so much of the fund as will be appropriated to those who were stockholders when the bill was filed and were not complainants, but actively resisted.

It appears that the fund for distribution would have been only $50,000 instead of $710,000, had it not been for the efforts of the petitioners.

In *Williams vs. Morgan*, 111 U. S., 695, the allowances to ***Mr. Campbell*** and ***Mr. Parsons***, made by the court below were sustained by this court.

In ***Fechheimer vs. Baum***, 43 F. R., 730, five per cent was allowed on the whole fund.

Not one of the cases above involved anything like the labor shown in this petition.

4. Let us now examine the reasons assigned by the court below for denying the petition. (Rec., pp. 110, 111, 112.)

(*a*) The first reason assigned by the judge below is that because the mandate of this court gave costs to the prevailing party, the court below, in considering the question of costs, was "*not proceeding upon its original authority,*" but was simply executing the mandate of this court, which allowed only taxable costs as between party and party, and was silent upon the subject of costs as between solicitor and client. *Perkins vs. Fourniquet,* 14 How., 330, *cited* by the court, merely holds that an appeal will lie to this court from an erroneous construction of its mandate by the court below. *Re W. G. R. R.*, 140 U. S., 91, cited by the court, holds that where this court affirms with costs, not mentioning interest, this court will, by mandamus, correct the court below in allowing interest. *Gaines vs. Rugg*, 148 U. S., 228, 239, is to the effect that the lower court has no judicial discretion to permit further testimony as to a matter when the holding below had been affirmed.

But we submit that it is *clear* that the question of allowance was not foreclosed by the mention of taxable costs in the mandate, for the *plain reason* that the question was not submitted to or acted upon by this court, and could not be, *except* in the exercise of appellate power, after the court below had exercised its original jurisdiction upon a *proper petition* for allowance.

(*b*) The next reason assigned by the judge below for denying the petition is that "*this is not a case*" in which an allowance can be made (although admittedly, says the judge, a case of hardship for the complainants). The judge said this is a "*case of antagonistic parties contending for the right to deal with their own property,*" and not a case "*for imposing the burden of the charges of the suit upon those who come in and share the benefits of it.*" The judge said "*there has been no saving of the fund.*"

It is proper to mention that the learned judge who said this was *not* the judge who heard the case originally, or he could not have taken such an obviously erroneous view. *The fact was that the entire property of the corporation, which the complainants procured to be sold for $710,000, which sum all the stockholders now divide, would have been sold for $50,000 by misbehaving directors,* and the stockholders would have divided *only $50,000* HAD NOT THE COMPLAINANTS FILED THIS BILL.

This cannot be gainsaid. It is clear *beyond controversy.* It results that the stockholders should *pay* those to whom they owe this immense profit! And this *case falls directly within the cases we cite above.*

(*c*) The judge below says the case was between "*antagonistic* parties. But we proved a MAJORITY of the stock requested a sale, and an early sale (against the obstructive efforts of Mr. Talbot's clients), and *filed with the special master, 21,175 shares out of a total of 40,000,*

Page 261, Record, in 2d (Marcus) Appeal,

and the certificates of stock to that amount remain deposited with the Master.

Same Record, p. 31 bottom, 32 top.

FINALLY.

The motion to dismiss should be denied, and the court should grant the allowance to counsel as prayed, reversing the order of the court below in that behalf.

DON M. DICKINSON,
ALFRED RUSSELL,
For Appellants.

Office Supreme Court U. S.
FILED.
APR 23 1894
JAMES

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 1041.

THOMAS H. MASON ET AL., APPELLANTS,

vs.

THE PEWABIC MINING COMPANY ET ALS., APPELLEES.

BRIEF FOR THE APPELLEES.

FIRST, STATEMENT OF THE CASE.

THE appellee company was a corporation for mining copper, established under the laws of the State of Michigan, and owning mineral land and mining plant in the county of Houghton in that State, and there working its mine, but, as allowed by Michigan law, having its general business office in Boston, in the State of Massachusetts.

April 4, 1883, the period of its corporate life expired without the knowledge of the great body of its stockholders and of its officers. When this expiration of corporate life became known to its directors, they attempted, under the advice of counsel, to effect a renewal of the company's chartered existence. Three of the directors filed in the Secretary of State's office the proper papers to constitute themselves a body politic and corporate with powers and for purposes similar to that of the lately expired corporation, with the same amount of capital divided into the same number of shares, of the same par value as of the old corporation; the new company, to avoid confusion, to have a name slightly altered from that of the old, to wit: that of The Pewabic Copper Company. (Record, p. 21.)

This was easy enough.

The difficulty arose in the attempt to transfer to this new nascent corporation the property which had belonged to the old corporation. The attempt was to do this, in part, by corporate action. At a meeting of the shareholders, held March 26, 1884, it was voted that the whole property of The Pewabic Mining Company be transferred to the new corporation nominally for a certain sum of money. Really no money payment, and indeed no sale whatever, was contemplated or desired by the officers proposing, or the shareholders authorizing, this seeming transfer. They intended, and by their vote at that meeting authorized, the apparent transfer to be completed, and the formal payment therefor to be made in this way, to wit: "The stock of such new corporation shall be issued to and received by the stockholders of this company in payment for the same; stockholders to have the right to receive equal number of shares in new company, if they so elect, on surrendering certificates of this company within thirty days after April 12, 1884." (P. 6.)

This is a complete and exhaustive statement of this matter of a prevented so-called sale, so far as the defendants in this suit — those whom these petitioners now seek to charge with counsel fees — are concerned, the "fifteen-sixteenths" of the shareholders who would not aid the original complainants in their complaint; but who, as the petitioners themselves set forth (p. 79), "have actively resisted the relief prayed." As to them, the above statement needs no modification or addition.

As to the original complainants, the above statement is incomplete; as to them, this should be added. What is spoken of above as a nominal sum was, in fact, $50,000. It was "*Resolved*, That the Board of Directors be authorized to sell and dispose of the property of the Company for a sum not less than $50,000;" "and in case stockholder does not take stock of the new corporation, he is to receive his *pro rata* share in money." (P. 6.)

The whole number of shares in the old, as in the new, corporation being 40,000, this *pro rata* share would be $1.25 per share. And this valuation has in the already completed adjudication of this case been found to have been too low as a price upon actual sale, and that finding has been the basis of the decree for their relief which the complainants have obtained in this case. But the record discloses no shareholders who did not desire to "take stock of the new corporation," other than the complainants in this bill. These complainants, then, are the only parties injuriously affected by this, which they call, an inequitable valuation. They are, therefore, the only parties benefited by the relief granted in this case. And as the petition now at bar does not pray that the allowance asked shall be made out of their share of the fund, this fact of an inadequate valuation has no bearing whatever in favor of granting the allowance.

That valuation in no way affects those shareholders who desired that formal transfer to be completed, who intended to "take stock of the new corporation," and who, therefore, as the petition itself alleges, "have actively resisted" the attempt to prevent and bring to nought that apparent—red-tape—sale, namely, "fifteen-sixteenths" of the shareholders whom these petitioners now seek to charge with the payment of their counsel fees.

To prevent the above proposed sale, the nature and effect of which have been stated, and to obtain a decree for a compulsory sale for cash of all the property of the defendant company whose charter had expired, the complainants brought their bill in this case, and over the resistance of the defendants, representing fifteen-sixteenths of the shareholders, the complainants obtained, May 4, 1886, a decree for such sale. The defendants appealed from that decree to this Court; and here appeared, by counsel, at the October Term, 1889, and urged upon the consideration of this tribunal these propositions, to wit: That the only substantial right of the complainants involved in this suit was the right to their distributive share of the property of the old corporation, and that in equity they were bound to take that share in the way least injurious to the corporate interests of their associates, the other fifteen-sixteenths of the shareholders; that such least injurious way was not that of a compulsory sale for cash: that a more equitable manner of protecting the complainants from all injury, and securing to them the full enjoyment of all their rights, both in equity and law, was by a judicial ascertainment, other than by sale, of the value of their distributive share, to be paid for by the defendants, if the defendants would avoid the compulsory sale prayed for by the complainants. Not so much upon equitable considerations growing out of the facts of this case, as upon precedents and technical rules, this honorable Court overruled this defence, and affirmed the decree made by the court below for a compulsory sale. It cannot be said that the efficient services rendered by these petitioners in leading this Court to that decision should be compensated by those shareholders who did not desire that result, who wished to retain their own property away from such sale.

The mandate for such a sale, filed in the Court below, May 6, 1890, in terms, directed the debts of the company to be ascertained before its property was to be sold; and the Court below, on motion of these defendants thereto, took action in that direction. It also, against the opposition of these petitioning counsel, once postponed an ordered sale of the property to a later day which it seemed would be more advantageous for a sale; and these petitioners resisted and defeated a similar request made under similar circumstances. After sale made to these complainants, these petitioning counsel appeared in the service of the purchasers, resisting the efforts of the defendant "fifteen-sixteenths" to procure a re-opening of the sale for the purpose of letting in a more advantageous bid. Acting as solicitors for the purchasing party, they succeeded in preventing such re-opening, not only in the Court below, but also in this tribunal, not upon grounds of advantage to arise from such prevention, to the great body of these defendants, but as matter of legal, technical right of the purchasers.

This portion of the services rendered by the petitioners clearly was rendered to the adversary of the defendants, and in no way to these defendants, or their advantage.

SECOND. ARGUMENT OF LAW.

I. *As to Jurisdiction.*

Beyond what has been set forth in the motion of the appellees for the dismissal of this case, little need here be added. For its ultimate answer, the question looks back to the Constitution of the United States. That instrument (Art. 3, Sect. 2) grants to this tribunal an appellate jurisdiction, but only "with such exceptions and under such regulations as the Congress shall make," not more or otherwise. "Such exceptions" need not be express. A tacit exception excepts. An omission to include, works an exclusion. (Castro *vs.* U.S., 3 Wall. 46 (47); Butterfield *vs.* Usher, 91 U.S. 246 (248)).

The only question, therefore, to be determined with reference to any case is, whether it is one which Congress has subjected to the appellate authority of this Court. It will not establish jurisdiction to show that the case is one which, logically, by the inferences of right reason, upon considerations which might prevail in a court of common law jurisdiction, ought to be appealable here. It must be made to appear that Congress has enacted that it shall be appealable here: that Congress has not even tacitly excepted it from the appellate jurisdiction of this tribunal.

The statute provisions governing the question of jurisdiction in this case are quite fully recited, and also are construed in National Bank *vs.* Peters, 144 U.S. 570.

The decision of this question occupies there the whole opinion, which cannot be abbreviated without omitting something here applicable, and which it does not seem necessary to reprint here in full.

II. *As to the Merits.*

The whole case of the petitioners in support of their petition is substantially, though briefly, stated very early in the petition, in these words (p. 79): "The litigation [which the petitioners conducted] was launched to prevent a pending sale of the assets for $50,000, and has resulted in producing a fund in court of $710,000."

(Of course the amount to be credited to the exertions of the petitioners, upon the above statement, is not the whole sum realized by the sale finally decreed, but that sum less that which would have been obtained by the sale which was prevented, the net gain by the litigation; that is, $710,000 less $50,000, and the debts; to wit: $660,000 less the debts,. Beyond this suggestion which the record raises, no question is made as to the amount of allowance prayed for.)

It is not necessary to the defence against the prayer of this petition to deny that the above statement, with the proper implications, is for the purpose of justifying and authorizing an allowance of the nature prayed for by these petitioners, a good statement in law. It may be conceded, at least, for the sake of argument, that where the efforts of a portion of the shareholders, by litigation, prevent a sale of the corporate property for $50,000, and procure one for $710,000, all the other shareholders who are alike with those carrying on the litigation benefited by its result, should alike contribute to its expense, including counsel fees. But the principle authorizing such allowance goes no farther. All who are to be required to contribute to the plaintiff's reimbursement must have been liable to like injury with him from the sale averted, and thus alike with him benefited by the sale effected. The above statement in the petition is good in law for charging the other fifteen-sixteenths of the stockholders, as the petitioners pray, only with the above implication; only with the implication that they, alike with the original complainants, would have been injured by the completion of the sale for $50,000.

If other shareholders could have lawfully derived, or if they believed that they could have so derived, from the averted sale, had it been completed, advantage greater than, or even equal to, that which results from the sale decreed, those other shareholders cannot be required to pay any expense of procuring the vacation of the one and the ordering of the other sale.

The non-litigants, in order that they shall be liable to contribution, must have a similar interest with the active litigants in the subject-matter of the litigation in what it prevents and what it promotes.

This is the rule as it was administered in the leading case to be found among the reported decisions of this Court, to wit: Trustees *vs.* Greenough, 105 U.S. 527. There, besides the complainant, were "other bondholders having an equal interest in the fund;" and "the bill sought to rescue that fund from waste and destruction arising from the neglect and misconduct of the trustees." The fund named "was pledged for the payment of the interest accruing on the bonds and instalments of the sinking fund for meeting the principal." (528.) There all the bondholders had but one and the same lawful interest in the subject-matter of the litigation. That interest was to save the fund from destruction, and to restore it to its proper function, which function was to discharge the obligations of the bonds.

And the opinion states the rule as the Court administered it as follows: "Where one of many parties having a common interest in a trust fund at his own expense takes proper proceedings to save it from destruction, and to restore it to the purposes of the trust, he is entitled to reimbursement."

The rule, then, plainly is, that those compelled to contribute must have a common interest with those to whose reimbursement they contribute. A positive common interest between contributors and contributee is an essential, indispensable element of the law of contribution.

A fortiori there must not be an adverse interest between them. They must not be opposing parties, adversaries in the very litigation, the expenses of which are before the Court to be provided. They never are such adversaries in the reported cases.

It appears plainly that those cases are brought as between these parties; that is to say, one individual, or more, having an interest in a fund exposed to waste, or something worse, brings a suit for its salvage against persons in fiduciary relation to that fund, persons in official capacity, officers in equity; and such plaintiff, or plaintiffs, prosecute such suit to a successful issue. As between these two adverse parties, chancery practice knows no rule of contribution. The defeated party is liable to costs as equity determines them, but not to contribution of expenses as between solicitor and client. It is a third party upon whom the actor in such suit may lay claim for contribution, — a party non-litigant, non-combatant, as the military phrase is. It is that class of persons who hold precisely the same relation to the *res* involved in the litigation, not as the defendants hold, but as is held by the plaintiffs; persons who might come in as plaintiffs, not those who have a lawful interest to come in as defendants; still less, those who actually do come in as defendants, who, to use the phrase of this petition, "actively resist" the suit of the plaintiffs.

Let us look closely at this aspect of this case. The right, or, perhaps more accurately, the wrong, on which the complainants in this cause claimed and obtained their chief object of pursuit, a decree for a compulsory sale of the corporate property common to them and the defendants, was wrongful action, not upon the part of any persons in fiduciary relation to that property; not upon the part of any persons having official control of that property; not officers, naturally few in numbers, against whom the whole body of stockholders might have had a common, single interest; not that at all. The action in this relation set up by the complainants as wrongful, was the action, not of the directors of the expired corporation, but the action of the great body of the stockholders, the action of a majority of shareholders in stockholders' meeting assembled; a majority, a two-thirds vote, or, as the petitioners now phrase it, the action of "fifteen-sixteenths" of all the corporators of the Pewabic Company.

It is against these shareholders, who, on March 26, 1884, by their votes, attempted to authorize the sale complained of, that these petitioners now raise a claim of contribution towards their counsel fees. And it appears that these shareholders, not only on March 26, 1884, took the action alleged against them in the complainant's bill, but through all the intervening years till now, they have, in this and subordinate courts, stoutly defended it. They are not non-litigants, to be called upon to contribute to counsel fees earned in serving their side of the contest; they are litigants, liable to costs, and costs alone.

This view can be made more vivid if a statement of fact by this solicitor will be allowed. Theoretically, the learned and able petitioners might easily obtain from these defendant shareholders the payment of the whole amount now claimed as counsel fees. If they would just undo all they have procured to be done in this case, put things back where they were when these petitioners "launched" this litigation, and then allow to be completed the sale which they have averted, these defendant shareholders would gladly pay them the whole sum prayed for in their petition, and that, too, more speedily than it could be obtained by regular process, through a decree of this Court allowing their claim. There would be no nice standing upon the question of amount. A handsome increase over what they have asked would be most cheerfully paid to them — paid gladly and with alacrity.

And for this reason, because such action on the part of these petitioners would put these defendant shareholders once more into the possession of what was once their own; would restore to them, as shareholders, their former shares of the corporate property, and allow them to control and operate it in fulfilment of their original and rightful design.

If this is what these defendant stockholders now desire, and would willingly pay for, it cannot be that early in 1884 they started out with a scheme to sell this corporate property for $50,000, less than the sum which these petitioners now name as a proper sum as compensation for counsel conducting litigation over that corporate property, and no other value. It cannot be that they have all this time been striving to get rid of that property; and, in fact, it is not so.

These defendant shareholders, in their vote of March 26, 1884, did not plan, nor purpose, nor desire any sale of the corporate property whatever. They were advised that they could, under a new corporate life, retain hold of their own old corporate shares only by means of a formal, nominal transfer; and to that end and no other they ordered such formal, nominal, unreal transfer. Their shares in the expired corporation were indeed to be surrendered, but upon what condition? upon what consideration? Upon condition that, upon such surrender, they each received an equal number of shares in the new. Such a mere exchange of certificates, a mere surrender of old and a taking of new by the same person, of course, worked no actual sale.

It takes nothing from the force of this statement, as to these defendants, that this attempted sale was actual in its character as to some other shareholders. It was actual as to these complainants, it has been so adjudged. It was actual as to them, because they insisted upon their right to make it so; but the Court has not found that it was actual as to any other shareholders whatever.

It was actual as to the complainants, and the Courts have afforded them the appropriate relief, and it is for them to pay the counsel whose excellent service to them has won their success. They cannot equitably call for contribution to the compensation of that service upon those who were not to be injured, but were to be benefited, lawfully benefited, by the sale complained of.

This is the view of the question at bar taken by the learned judge in the court below, the view which controlled his decision.

Mr. Judge SEVERENS, in his opinion, says: "The principle which lies at the foundation of this practice is that of imposing the burden of the charges of the suit upon those who come in and share the benefits of it. The doctrine of this subject was fully discussed, and the reason on which it rests stated, in Trustees *vs.* Greenough, 105 U.S. 527; and Central R.R. Co. *vs.* Pettus, 113 U.S. 116. That principle is not applicable to the case of antagonistic parties who have been contending against each other for the right to deal with their own property in the way which they deemed most advantageous for their interests. There was nothing illegal, in the sense that it was contrary to public policy, in the course pursued by the majority of the stockholders: that is, in turning over the assets of the expired corporation to a new one organized by the old stockholders, and in which all of them could join, or from which some might stay out, and have their interest in the old corporation paid in cash;

and if the dissenting minority had concurred, the transfer would have been valid. What was adjudged was, that the minority could not be compelled to do what the majority proposed. There has been no saving of the fund, and it is not shown that any advantage has accrued to the majority from the suit. If the course they had desired had been pursued, it may be, for aught the Court can see, the stockholders of the Pewabic Mining Company would have preserved the property, and the same developments would have taken place which have enhanced the market value of it." (Pp. 111, 112.)

Here are stated the weighty facts: "There has been no saving of the fund," and no advantage has been shown to have "accrued to the majority," the defendants.

In fact, as to this majority, no sale for $50,000 has been prevented. In the only statement of the petition of what might be, in law, good ground for its allowance, it states what is not correct in fact. The petitioners have never effected what they allege; and there is before the Court no ground of fact to justify the allowance of their petition.

On the contrary, as the opinion recognizes, if the course desired by the defendants had been pursued, the stockholders of the old company, all of them, might "have preserved that property, and the same developments would have taken place which have enhanced the market value of it."

To put the matter very plainly, it is the case of a claim for salvage reward, where the only service rendered has been that of wrecking the vessel.

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